

mental health, the justice system, and YOU

**UNDERSTANDING THE PROCESS,
AND THE PEOPLE THAT CAN HELP**



A Publication of Waterloo Wellington
Human Services and Justice Coordinating Committee

Second Edition

ACKNOWLEDGEMENTS

We are pleased to publish the Second Edition of the **Mental Health, the Justice System and You Understanding The Process, And The People That Can Help** booklet, created through the efforts of well-over a decade of community collaboration in Waterloo-Wellington.

Based on the Provincial Strategy created by four provincial ministries in 1997, more intentional relationships were formed through the Human Services and Justice Coordinating Committees (HSJCC) across the province, and locally in Waterloo-Wellington at both the municipal and regional level. Through the efforts of people on local HSJCCs, the experience of people who have mental health and addictions issues travelling through the justice system was understood with empathy and compassion.

Lynette Fritzley, then Assistant Crown Attorney, was inspired by the life and remarkable journey of Martin Tarback and his family to provide countless volunteer hours as lead writer of the first edition. Supported administratively by the local branch of the Canadian Mental Health Association, a grant was received from the Law Foundation of Ontario that enabled the first edition's layout and printing. The guide, first published by the Kitchener Human Services and Justice Coordinating Committee for Waterloo Region, was then extended into Wellington County, providing a local narrative and resource information.

The efforts to support the journey were well-received by local community members, and professionals working in human services and justice systems alike. The feedback and experience captured the attention of the Provincial Human Services and Justice Coordinating Committee who embarked on the creation of a similar guide for use by Justice Committees and communities across the province, which is now in its final stages and scheduled for release in 2015.

The Second Edition's re-design was supported through the efforts of Sharon Deally-Grzybowski and Patricia Syms Sutherland, both of whom have considerable experience and talent in encouraging responsive health systems.

We are grateful for the efforts of the HSJCC members who contributed to the first edition, and honor their effort by continuing to build on and improve the resource available to people in our local communities. It is this desire to help people we encounter, to equip and empower their network through information, that the opportunity to make things better unfolds. Through its modest contribution, we hope this guide will continue to make the difficult journey and the process of creating a better life and more welcoming and safer community for everyone, just a little easier.

Don Roth

Canadian Mental Health Association, Waterloo Wellington Dufferin

Funding for the Second Edition of the Waterloo-Wellington Mental Health, the Justice System & You booklet has been provided by the Waterloo Wellington Local Health Integration Network (WWLHIN).



Waterloo-Wellington Human Services and Justice Coordinating Committee

FOREWORD

Human Services and Justice Coordinating Committees – Provincial and Local History

“The Human Services and Justice Coordinating Committees (HSJCCs) were established in response to a recognized need to coordinate resources and services, and plan more effectively for people who are in conflict with the law. Priority consideration is for people with a serious mental illness, developmental disability, acquired brain injury, drug and alcohol addiction, and/or fetal alcohol syndrome. The committees were generated as a cooperative effort between the Ministries of the Attorney General, Community and Social Services, Children and Youth Services, Health and Long-Term Care, and Community Safety and Correctional Services.

The two primary areas of emphasis for the committees are:

- 1.To provide a planning table to bring together service providers to find solutions to the problem of the criminalization of people with the defined unique needs, and;
- 2.To develop a model of shared responsibility and accountability in dealing with this group of individuals at points of intersection with the justice system.

Regional committees were established to coordinate communication and service integration planning between health, criminal justice, and developmental service organizations within specific regions. Local committees provide input to these regional groups. The Provincial Committee, consisting of regional chairs and Ministry representatives, has been developed as a provincial planning body.”

(Source: www.hsjcc.on.ca)

In Waterloo Wellington, the Regional HSJCC offers stakeholders from these various sectors the opportunity to work together. Local police services, including the Guelph Police Service Waterloo Regional Police Service, and the Ontario Provincial Police, probation and parole, a range community mental health and addiction services, legal aid, crown and defense attorneys, correctional services, and various hospital programs are all part of our local committees and work. In keeping with the strength of these collaborative efforts, the Waterloo-Wellington Regional HSJCC is the publisher of this material (First Edition 2010), in part to take positive action on the following direction from the Crown Policy Manual.

Ontario Ministry of the Attorney General

“Mentally disordered or developmentally disordered people often come into contact with the criminal justice system. These offenders should not be subjected to more onerous consequences than the general population, solely as a function of their disorder/disability.

In recognition of their particular circumstances, mentally disordered or developmentally delayed offenders may warrant special consideration within the criminal justice system, depending on the nature and circumstances of the offence and the background of the offender. This may require an emphasis on restorative and remedial measures, such as specialized treatment options, supervisory programs or community justice programs, as alternatives to prosecution. To the extent consistent with public safety, and in appropriate circumstances, offenders with mental disorders, and those who are developmentally delayed, should be given access to alternatives to prosecution.

Protection of the public, including the victim, if any, is the paramount consideration in the assessment of whether alternatives to prosecution are appropriate. No single factor will be determinative; however Crown counsel should consider the seriousness of the offence, public safety, and whether the consequences of prosecution would be unduly harsh, among other factors.”

(Source: Crown Policy Manual, Ontario Ministry of Attorney General)

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This booklet will refer to “Jane”, an imaginary adult accused with mental health issues. Any resemblance to any person is unintentional.

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

► Please also look for the “Helpful Hints” scattered throughout the booklet.

INTERACTION WITH THE POLICE

1

INTERACTION WITH THE POLICE

Jane can come into contact with the police in a variety of ways. Contact can happen in a public place, in a private home, by chance or by someone contacting the police, be it Jane herself or another person calling about Jane.

Before she enters the justice system, it is helpful for Jane to have supports from family, the community and especially access to the social determinants of health such as housing, education, employment and income. In fact, having these supports in place can help prevent Jane from coming into contact with the law to begin with. It is always good to make a plan when Jane is well, including any signed documents with permissions for information before a crisis happens. It is also important to remember that if Jane has a caregiver or someone in a support role, such as a trusted friend or family member, they may also need some support or help as they deal with the emotional impact of Jane's contact with the justice system.

All police officers in Waterloo Region, Guelph and Wellington County have training in mental health issues, although their individual experience in dealing with mental health calls will vary. The type of call described as a “mental health call” can include many different scenarios, and the individual circumstances of each call will determine how an officer proceeds.

Police officers will use their discretion in deciding how best to handle a call. If Jane has committed a crime, but the police suspect that Jane has mental health issues, they may decide to do something other than lay charges. Police discretion will be influenced by many things, including the following:

- The seriousness of the crime;
- The actual violence or risk of future violence;
- The danger to members of the public or Jane herself;
- Jane's prior police occurrences/prior criminal record;
- Whether a weapon was used;
- Available supports, e.g. family, friends, crisis workers, etc.;
- Available alternatives, e.g. family doctor appointment, pre-charge diversion, hospital, etc.;
- Type of crime: The police have very limited discretion for some crimes, such as domestic violence offences, and firearms offences.

In Waterloo Wellington, the vast majority of police calls are handled by three different police services.

Waterloo Region – Waterloo Regional Police Service

City of Guelph – Guelph Police Service

Wellington County – Wellington County Ontario Provincial Police (OPP)

Although if an occurrence happens on a provincial highway, such as the 401 or Highway 7, then the appropriate OPP detachment will take the call.

A police officer's most common options are:

Issue a Warning

- If the offence(s) are minor, Jane has no prior criminal record, and she is not a danger to herself or others, the officer may release Jane at the scene with a warning.

Pre-Charge Diversion

- If the offence(s) are minor, Jane has no prior criminal record or a very limited one, and is not a danger to herself or others, the officer may refer Jane to the Canadian Mental Health Association, Waterloo Wellington Dufferin for a diversion program instead of laying charge(s). If Jane completes the program, charge(s) will not be laid, but if she does not, the officer may follow through with charge(s).



Call the Mobile Crisis Team

The local police services have written protocols with the Canadian Mental Health Association, Waterloo Wellington Dufferin (CMHA-WWD), that encourages officers to call the Mobile Crisis Team for assistance. This option can be used for various offences, and will likely be used if Jane is in crisis and requires assistance, but is not a danger to herself or others.

WRPS Headquarters: Courtesy of Waterloo Regional Police Service This option may be used as an alternative to laying charges or it may also be used when charge(s) being laid. In the second case Jane will be released at the scene by way of an appearance notice or a summons.

In some areas of the Waterloo Wellington, psychiatric nurses have been hired by the Canadian Mental Health Association to respond to mental health crisis calls with the police. Specialized Crisis Team (SCT) nurses can provide advice to the police officers on the scene as they assess the situation and Jane's mental health needs. From there, they can help the police determine what is the most appropriate course of action for Jane. The SCT can help the Jane with her mental health issues, arrange for short-term support and counselling, and, if necessary, accompany Jane to the local psychiatric hospital.

► Helpful Hint: For Families & Friends

If you are a family member / friend and are with Jane when police arrive, inform the police of Jane's mental health issues before they interact with her. Give suggestions on how best to approach her, but let the police take the lead.

If the police take Jane into custody, offer them her medication and any instructions they will need for her care. Record the officers' names and badge numbers for future reference, and ask them to explain exactly what is happening and what your role can be. Take notes of what was said / what occurred for future reference.

Arrest or Apprehension under the *Ontario's Mental Health Act*

If Jane has committed a criminal offence and meets the criteria under section 17, then the police will use their discretion as to whether to proceed with criminal charges, apprehend Jane under *Ontario's Mental Health Act* or both. The police will consider different factors in making that decision including: the seriousness of the crime, the severity of Jane's mental disorder, and the risk of violence to herself or the public.

Who lays the charge?

In Ontario it is the police that lay the charge(s), not the victim of an offence. That means that if you call the police to respond to a crisis during which a criminal offence has occurred, it is solely the police officer's decision as to whether charge(s) will be laid. Your input is considered, but does not necessarily influence the police decision.

Section 17 of *Ontario's Mental Health Act* allows the police to apprehend Jane and take her to the closest psychiatric facility if the below criteria are met.

Section 17 of the *Ontario's Mental Health Act*

Section 17 reads:

17. Where a police officer has reasonable and probable grounds to believe that a person is acting or has acted in a disorderly manner and has reasonable cause to believe that the person,
 - (a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself;
 - (b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; or
 - (c) has shown or is showing a lack of competence to care for himself or herself, and in addition the police officer is of the opinion that the person is apparently suffering from a mental disorder of a nature or quality that likely will result in
 - (d) serious bodily harm to the person;
 - (e) serious bodily harm to another person; or
 - (f) serious physical impairment of the person,

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

Waterloo Wellington has three hospitals with psychiatric facilities

Kitchener Waterloo – Grand River Hospital

Cambridge – Cambridge Memorial Hospital

Guelph / Wellington – Homewood Health Centre (Emergency Mental Health Unit)

Arrest

The more serious the charge(s), the more likely the Criminal Code and public safety concerns will take priority over Jane's mental health issues and Jane will be arrested. If public safety concerns can be addressed at the scene, Jane may be released and given a date for a future court appearance. If they cannot, Jane will be taken into custody and either released at the police station or held for bail court.

- If Jane is arrested she has the right to know why and she must be told that she can contact and consult a lawyer of her choice. If Jane wishes to speak to a lawyer, she must be given an opportunity to do so as soon as possible, and the police should not question her until after she has spoken to a lawyer, or waived her right to do so.
- As an alternative to contacting a lawyer of her choice Jane has the right to contact Legal Aid Ontario to seek the free assistance of a Legal Aid Duty Counsel. Legal Aid Duty Counsel is available 24 hours a day, 7 days a week, to assist persons under arrest who choose not to speak to a defence lawyer of their choice.

► Helpful Hint: Legal Aid Ontario

The Legal Aid Ontario phone number is 1-800-668-8258.

The Legal Aid Ontario website is www.legalaid.on.ca.

A Note about Criminal Records

There is a difference between a criminal record and a “vulnerable sector check”: A criminal record is a record of criminal findings of guilt and convictions. There are two types: A national record maintained by the RCMP, and a local record maintained by the local police service. A Justice will consider Jane's criminal record if she is being sentenced for a crime.

A vulnerable sector check is more inclusive. It contains information about other contacts Jane has had with the police. This may include charges that were laid but for which Jane was not convicted, apprehensions under *Ontario's Mental Health Act*, or any other contact the police thought it necessary to record.

RELEASE FROM CUSTODY (BAIL)

2

RELEASE FROM CUSTODY (BAIL)

RELEASE BY POLICE

If Jane is arrested for an offence, the type of police releases, from least restrictive to most restrictive, are the following:

Summons

- Used for minor, non-violent offences.
- Jane is arrested, but released at the scene without conditions. A summons is served upon her at a later date, outlining the charge(s) she is facing, and the date and time, courtroom number, and courthouse address for her first court appearance.
- The summons may also contain a separate date and time for Jane to attend at a police location for her photograph and fingerprints to be taken for identification purposes.
- Also used to correct charge(s) – if the police have decided to lay more and/or different charge(s), a “corrective” summons may be used to inform Jane of the changes and possibly a new court date.
- There are no conditions to obey.
- It is a criminal offence for Jane not to attend her court date or her fingerprint date.

Appearance Notice

- Used for minor, non-violent offences.
- Jane is arrested, but released at the scene after being given an appearance notice, which looks similar to a traffic ticket. The appearance notice will have a date and time for her first court appearance, as well as the courtroom number and courthouse location.
- The appearance notice may also contain a separate date and time for Jane to attend at a police location for her photograph and fingerprints to be taken for identification purposes.
- There are no conditions to obey.
- It is a criminal offence for Jane not to attend her court date or her fingerprint date.

Officer in Charge Undertaking / Promise to Appear

- Used for many types of offences.
- Jane is arrested and taken into police custody. She will be taken to a Police Division and held in a police cell.
- The police officer in charge of the cells uses his/her authority to release Jane with two documents: A Promise to Appear that contains her court date details, and an Officer in Charge Undertaking that contains certain conditions she must obey. Conditions could include not to contact the victim(s), not to attend certain place(s), and to reside at a certain address and not move from that address without notifying the police.
- It is a criminal offence for Jane not to attend her court date or to disobey any of her conditions.

Bail

If the police determine that it is necessary to hold Jane for bail, they must bring her before a Justice of the Peace within 24 hours of her arrest. If Jane is charged and held for bail during the work week she will be brought to the bail court at the Ontario Court of Justice. (If she is charged in the Region of Waterloo, the Ontario Court of Justice is located at 85 Frederick Street, Kitchener; OR if she is charged in the City of Guelph and/or Wellington County, the Ontario Court of Justice is located at 36 Wyndham Street, Guelph).

If Jane is held for bail on the weekend or on a statutory holiday, Jane will appear by video-link in the Weekend and Statutory Holiday (WASH) Court in London. Bail court is also called Show Cause Court.

A few offences have special bail rules. The offences listed in section 469 of the Criminal Code are the most serious, e.g. murder, treason, and bail must be formally applied for in the Superior Court of Justice.

Bail Court – Released on Consent of the Crown

- Used for many types of offences.
- When Jane first appears in bail court the Crown will review the allegations contained in the Crown brief and decide whether to release Jane on bail or hold her in custody for a bail hearing (show cause hearing).
- Factors that the Crown will consider include:
 - Type of charge(s) and allegations;
 - Jane's criminal record and prior police occurrences;
 - Safety of the victim and public at large;
 - Likelihood Jane will return to court if released;
 - Likelihood of Jane committing further criminal offences if released;
 - Supports available in the community.
- Although the Crown may consent to Jane's release and will propose conditions Jane has to follow, the final decision about Jane's release always remains with the Judicial Officer.
- The Crown can suggest Jane be released on 5 different types of releases:
 - **An undertaking without conditions:** The only requirement is that Jane must attend Court as directed.
 - **An undertaking with conditions:** Conditions depend on the charge(s) Jane is facing, but can include a curfew, no contact with the victim / witnesses, not to attend certain places, no alcohol or drugs, or/and no weapons.
 - **A recognizance:** Similar to an undertaking with conditions, but Jane pledges a monetary amount to the court that she will follow her conditions.
 - **A recognizance with one or more sureties:** Similar to an undertaking with conditions, Jane pledges a monetary amount to the court that she will follow her conditions, and a person responsible for Jane, called a surety, pledges a monetary amount that he/she will supervise Jane and ensure she follows her conditions.
 - **A cash recognizance:** Used if Jane resides more than 200 km away from the place in which she is charged. Similar to a recognizance, except the money is not pledged, it is actually deposited with the Court in order to secure Jane's release.

- It is a criminal offence for Jane to violate any terms of her bail release.

► Helpful Hint: Bail Court

If you want to support Jane at bail court. Arrive at the Court House, look for the bail court duty counsel (or private counsel if Jane has retained one). Explain who you are and who you are there to help. Tell them about Jane's mental health issues and if medication is necessary. If you are willing to be a surety make sure you have photo identification (for a criminal record check), and consider what conditions would assist you in supervising Jane. Remember bail court is extremely busy, so you may be at court for many hours.

Bail Court – Released after Bail Hearing

- If the Crown does not consent to Jane's release she will have a bail hearing. While a bail hearing might be done the first day Jane appears in court, it is more likely that her case will be adjourned a day or more for the hearing, and Jane will be remanded (held) in custody until then. Female accused are sent to the Vanier Centre for Women, while male accused are sent to the Maplehurst Correctional Centre.
- In most bail hearings the Crown has the onus of convincing the Judicial Officer that Jane should be held in custody until her charges are dealt with. There are three possible grounds for Jane's detention: first, that if released she will not return to Court; second, the protection of the public (including a victim) and the likelihood Jane will commit a further offence or interfere with the justice process; third, that releasing Jane will undermine public confidence in the justice system. Factors that the Judicial Officer considers include the same factors the Crown considers on a consent release, i.e. the type of charge(s), Jane's criminal record and police occurrences, supports in the community, etc.
- In some cases the onus may be on Jane to prove she should be released. These are called "reverse onus" bail hearings. Some charges are automatically reverse onus charges, such as certain firearm offences and some drug trafficking offences. Most reverse onus hearings, however, are caused by Jane having been on bail for an indictable or hybrid offence and being arrested on new charge(s).
- If the Judicial Officer releases Jane, he/she will determine the type of release and what conditions to impose.
- Both Jane and the Crown have a right to appeal the bail decision, which is called a "Bail Review", to the Superior Court of Justice.

Bail Court – Detained after Bail Hearing

- If the Judicial Officer decides that Jane cannot be released back into the community Jane will be detained pending the completion of her charges. The decision must be based on one or more of the three grounds for detention listed above.
- Jane has a right to appeal her detention in a Bail Review to the Superior Court of Justice.

Jane can consent to her detention in custody at any time, without having a bail hearing. This is usually only done in cases involving serious violence or if Jane has a lengthy criminal record. This should not be done without consulting her defence counsel or a duty counsel.

Region of Waterloo Bail Program – Bail Court

- If Jane does not have a family member or friend that can act as a surety, she will be referred to a Bail Verification and Supervision Program.
- Bail programs are an alternative to pre-trial custody and a referral can come from various sources including the court, Crown, defence counsel/duty counsel, correctional staff, community agencies, family, friends and Jane herself.
- Verification requires Jane to complete an interview that gathers information that will be shared with the court to determine if she should be released from custody. The interview is then verified by contacting other relevant individuals and agencies and a bail worker will advise the court on whether Jane is suitable for the program.
- Supervision begins once Jane is released with a judicial order with the condition that she report to the local agency bail program, attend all scheduled court dates and abide by any other bail conditions.

► Helpful Hint: Approaching the Bail Crown

While you are welcome to speak to the Bail Crown, it is best to speak to duty counsel / retained counsel first. Duty counsel's / retained counsel's main obligation is to assist Jane. The Crown will be concerned about Jane's well-being, but their primary concern is public safety and upholding the law.

The Crown can use information you provide for any purpose they feel necessary, and it may not be the way you had intended. Furthermore, anything you tell the Crown is disclosable to the court, the police, and to Jane. If you want to be a surety for Jane, expect that the Crown will have questions for you, and they will either ask you outside of Court or have you take the stand and provide sworn testimony. When speaking to the Crown, whether under oath or not, be truthful – they will likely check the information you provide.

REGION OF WATERLOO – FORM 2 BAIL RELEASES

In the Region of Waterloo, a special protocol has been developed between the Crown Attorney's Office, the Waterloo Regional Police Services, and Grand River Hospital through which certain accused can be released on bail to reside at the mental health unit at Grand River Hospital. These bail releases are called "Form 2 Bail Releases".

Not all accused who have mental health issues can be released on a Form 2 Bail Release. If Jane's mental disorder is severe enough that she meets the criteria of a Form 2 under *Ontario's Mental Health Act*, the Crown must still be confident that it is safe to release Jane on bail to live at Grand River Hospital. Grand River Hospital has a locked mental health unit, but it is not as secure as a prison or secure forensic psychiatric hospital. Therefore, if the offence is extremely violent, or Jane has a long criminal record of violence, she may not be eligible for the bail release.



Canadian Mental Health Association
Waterloo Wellington Dufferin, 67 King Street East, Kitchener

If Jane meets the criteria for the Form 2, and the Crown is satisfied she can be released on bail to live at Grand River Hospital, Jane must still consent to the Form 2 Bail Release. The protocol will not force Jane into the hospital against her will. If she would rather have a regular bail hearing or remain in custody, that is Jane's choice.

If the Crown and Jane agree to a Form 2 release then evidence is called before a Mental Health Court Justice to satisfy both the Form 2 criteria under *Ontario's Mental Health Act*, and the bail release. If the Justice orders the Form 2 and Jane's release on bail, the Waterloo Regional Police Service will take Jane to Grand River Hospital.

The terms of Jane's bail will depend on the nature of the charge(s) she is facing, but two terms will be standard:

- Reside at Grand River Hospital and follow the rules of the hospital; and
- Remain on the grounds of Grand River Hospital.

It is still completely the hospital's decision whether or not to accept Jane as a patient. If Jane is not admitted to Grand River Hospital, the police will take Jane back into custody and she will appear as soon as possible in bail court to explore her next options.

When Jane is discharged, Grand River Hospital will call the Waterloo Regional Police Service and the police will pick Jane up, arrest her for an anticipated breach of her bail terms (to live at Grand River Hospital term) under s. 524 of the Criminal Code, and bring her back to the first available bail court. Jane will not be charged with an offence for breaching her bail term as it is not her fault that she is being discharged. If Jane's mental health is relatively stable when she returns to bail court she will likely be re-released back into the community.

A Form 2 Bail Release allows Jane to receive treatment for her mental disorder and at the same time ensures public safety by addressing what may be the underlying cause(s) of Jane's criminal behaviour.

BAIL ESTREATMENT

If Jane is released on her own recognizance and fails to attend Court, or is convicted of breaching one of her bail terms, the Crown can seek an order that Jane must forfeit the money she pledged to the Court on her recognizance.

If Jane is released on a recognizance with one or more sureties and fails to attend Court, or is convicted of breaching one of her bail terms, the Crown can seek the forfeiture of the monies that Jane and the surety / sureties pledged to the Court.

The Crown's application for the money is called an "estreatment", and takes place in the Superior Court of Justice. Jane and the surety / sureties will receive a notice of estreatment by registered mail, with the date, time, and location of the estreatment hearing. Jane and the surety / sureties are allowed to attend the hearing and try to convince the presiding Superior Court Justice that a judgment for the amount pledged should not be issued against them. If Jane and the surety / sureties do not attend, it is likely a judgment will issue against them. The Sheriff is in charge of collecting estreatment judgments.

When does Bail End?

All forms of release are in effect until Jane's case is completely over, or her bail is otherwise changed by a Judicial Officer.

If Jane has any questions about her bail, or if she wants to vary her terms, she should contact her defence counsel or a duty counsel.

Revoking a Surety...

Jane's surety can change his/her mind about being a surety at any time, for any reason. To be removed as Jane's surety, he/she must attend at the Courthouse and ask a Justice of the Peace to be removed. The surety does not have to provide a reason for doing so. Once the surety is removed, a warrant will be issued for Jane's arrest, but the surety's duties do not end until Jane is arrested by the police.

THE ROLE OF THE CROWN

3

THE ROLE OF THE CROWN

The Crown represents the Public in the prosecution of criminal offences. The phrase “the Crown” refers to the office of the Crown Attorney generally, while the word “Crown” is used to refer to individual Crown Attorneys, Deputy Crown Attorneys, Assistant Crown Attorneys, and Crown Counsel. All Crowns are employed by Ontario’s Ministry of the Attorney General.

The Crown is a separate entity from the police. While they work closely together, the Crown and the police have different responsibilities and different standards of proceeding with criminal charge(s). The police must have reasonable grounds to believe an offence has been committed in order to lay charge(s), while the Crown must have the higher standard of a reasonable prospect of conviction in order to proceed with the charge(s). If the Crown decides there is a reasonable prospect of conviction, the Crown must then be satisfied that it is in the public interest to proceed with the charge(s).



Waterloo Region Courthouse, 85 Frederick Street, Kitchener

As Jane is a member of the public, the Crown must respect her interests as well as the interests of all other members. In that sense, the Crown will treat Jane fairly, and with respect. However, it is important to remember that the Crown represents all members of the public, as well as the public’s interest in maintaining a safe, law-abiding, and just society. This is different than the role of a defence counsel, who is only responsible for Jane’s interests.

Certain offences are prosecuted by the Federal Government’s Department of Public Prosecutions. These prosecutors are often called “Federal Crowns”, and have separate offices and contact information. The most common offences prosecuted by the Federal Crowns are drug offences under the *Controlled Drugs and Substances Act (CDSA)*, and tax offences, under the *Income Tax Act*.

MEETINGS WITH THE CROWN

If Jane has hired a defence counsel, then Jane should not discuss her case with a Crown. It would be improper for the Crown to talk to Jane directly when she has retained a defence counsel; instead the Crown and defence counsel will discuss Jane’s case.

If Jane is representing herself then it is completely her decision whether to discuss her case with a Crown. If she wishes to, then she can contact the Crown’s Office to set up a meeting, called a “resolution or pre-trial meeting”.

Jane's family members and friends are also welcome to meet with the Crown. However, it must be remembered that everything told to the Crown can be disclosed to Jane, as Jane has a right to all relevant information the Crown has in its possession. Furthermore, the Crown cannot promise what use it will make of the information provided. Therefore, it may be beneficial for Jane's family and friends to speak to Jane's defence counsel / duty counsel prior to speaking to the Crown, in order to prevent disclosing something to the Crown that might upset or prejudice Jane. Finally, while the Crown will welcome any information provided, the Crown cannot discuss the details of Jane's case with her family and friends in Jane's absence. As a result, it should be expected that the meeting will involve the Crown accepting any information that the family and friends want to disclose, and not a discussion of the facts of the case.

If it is one of Jane's family members or friends that is the victim of Jane's offence then the Crown will be able to discuss more details of the case, as the Crown has an obligation to a victim of a crime to keep them informed. The Crown understands that it is often difficult for one of Jane's family members / friends who have been victimized to participate in the criminal justice process, and he/she will try to explain the process and respect the victim's input. It must be remembered, however, that while the Crown will consider the victim's input, it is only one of a number of considerations the Crown must look at when deciding how to proceed with Jane's case.

REGION OF WATERLOO - MENTAL HEALTH COURT CROWN

The Region of Waterloo has a Crown assigned to the Mental Health Court and to oversee all mental health files. If Jane wishes to have her case heard in Mental Health Court, it will be the Mental Health Court Crown, together with the CMHA Mental Health Court Coordinator, who will assess Jane's suitability for the Court.

If Jane's case has been moved into the Mental Health Court, then the Mental Health Court Crown will monitor Jane's case as it moves through the criminal justice system. The Mental Health Court Crown has a good understanding of *Ontario's Mental Health Act*, mental disorders, consent and capacity board issues, and other issues that are unique to mental health cases.

► Helpful Hint: Contact with the Crown

Remember that Crowns are often busy. Jane's case could be one of hundreds they have to deal with in a week. As a result, if Jane wishes to speak to a Crown about her case, it is best whenever possible to call / attend ahead to make a "pre-trial" appointment. When Jane contacts the Crown's office, she needs to provide her full name and next Court appearance date to enable staff to find the file easily.

Jane is entitled to all the relevant evidence against her in the Crown's and police's possession. This is called "disclosure", and is usually available to Jane at her first court appearance. Certain restrictions apply to disclosure, e.g. Jane will not be given information that would disclose the identity of a confidential police informant.

Disclosure is most often in paper form, but may also be contained on CD or DVD. If the full disclosure brief is not available at Jane's first appearance, the Crown will ensure the remainder of the materials are given to her as they become available. If Jane is not satisfied with her disclosure, she can outline her concerns in writing to the Crown and the Crown has an obligation to respond.

THE ROLE OF DEFENCE COUNSEL / DUTY COUNSEL

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DEFENCE COUNSEL / DUTY COUNSEL ASSISTANCE

If Jane is arrested by the police she must be informed of her right to contact a defence counsel, or a legal aid duty counsel. If she chooses to exercise that right, Jane must be given an opportunity to contact either one as soon as possible. Jane also must be given privacy when speaking to that counsel, unless there is a reason why this cannot be done, e.g. she is in the hospital and there is no way to ensure privacy.

If Jane contacts a defence counsel upon her arrest, she is under no obligation to hire that specific counsel if her charge(s) proceed through the criminal justice system.

DEFENCE COUNSEL

Defence counsel play a crucial role in the criminal justice system. He/she represents Jane's interests and ensures Jane is treated fairly throughout the process. The criminal justice system has become increasingly complex over the years, and a defence counsel will assist Jane in understanding the process.

There are many criminal defence counsels in the Region of Waterloo, Guelph, Wellington County and the surrounding area. Jane should find one she feels comfortable with and has confidence in. Furthermore, defence counsel have different rates, and if Jane is paying for the counsel with her own money, she may wish to compare the rates of a few counsel before deciding on one. If Jane loses confidence in her defence counsel, she can dismiss him or her.

Jane's defence counsel's primary obligation is to Jane. This is true even if someone else pays the defence counsel. For example, even if Jane's family pays for the defence counsel, the defence counsel works for Jane and must follow Jane's instructions, not those of her family. There may be situations in which Jane and her family do not agree, or situations in which Jane directs her defence counsel not to share information with her family.

Choosing a Defence Counsel

If Jane's mental health issues played a role in her offence(s) she may wish to look for a defence counsel that has experience with both criminal matters and mental health law. Not all defence counsels accept mental health work, or have experience with *Ontario's Mental Health Act* or community mental health resources.

If Jane's mental disorder is severe enough that the Crown, court, and/or a defence counsel / duty counsel feel Jane may be unfit to stand trial, i.e. she does not understand the court proceedings and/or cannot communicate with counsel, a defence counsel will be appointed to represent Jane and protect her interests while the court explores the issue of fitness to stand trial.

LEGAL AID ONTARIO

If Jane cannot afford to retain a defence counsel then she can apply to Legal Aid Ontario for assistance. Whether Legal Aid Ontario will fund Jane's case depends on a number of factors, including her income and any other assets, and what the Crown is seeking as a sentence if Jane is convicted. Generally, the more serious the possible penalty, the more likely Legal Aid Ontario will fund Jane's case.

Jane can apply for Legal Aid by phone, on the internet, or in person. She will need to have her Crown screening form as well as information about her income and assets with her.

► Helpful Hint: Legal Aid Ontario

The Legal Aid Ontario phone number is 1-800-668-8258.

The Legal Aid Ontario website is www.legalaid.on.ca.

The Legal Aid staff is available at the Ontario Court of Justice Courthouse:

Guelph and Wellington County

36 Wyndham Street, Guelph
Monday, Tuesday, Wednesday, Friday
9:00 am to 1:00 pm

Region of Waterloo

85 Frederick Street, Kitchener
Monday, Tuesday, Wednesday, Thursday, Friday
9:00 am to 4:00 pm



North Wellington Operations Centre: Courtesy of Wellington County OPP

If Jane is granted Legal Aid assistance she will be given a piece of paper called a certificate, which she can give to a defence counsel of her choice that will accept it. Most criminal defence counsels accept Legal Aid certificates.

If Jane is denied Legal Aid assistance she can appeal that decision to the Legal Aid Area Committee, but must do so within 15 days. To launch an appeal Jane must send a letter of appeal to the Legal Aid Office listed on the notice she received, for consideration by the Area Committee. Jane should contact the District Office in Hamilton at 1-877-449-4003 before launching an appeal to ensure the appropriate information is contained in the appeal letter.

DUTY COUNSEL

If Jane does not qualify for Legal Aid assistance and does not retain a defence counsel, duty counsel will be available to assist her for much of the court process.

Duty counsel is available in the courthouse to assist Jane on the days she has a court appearance, whether she is in custody or out of custody. They can appear with Jane on adjournments, bail appearances, bail hearings, and guilty pleas. Duty counsel cannot attend for a scheduled pre-trial with the Crown on Jane's behalf or represent Jane at a trial.

A duty counsel has been assigned to the Region of Waterloo's Mental Health Court every week. These duty counsels have experience in both criminal matters and mental health law. They have specifically chosen to work in the Mental Health Court because they have an interest in helping those with mental health issues, and they will be able to assist Jane with her case. They can provide Jane with legal advice on her options, help her in connecting with community resources, appear in court with her, and speak to the Crown and the court on her behalf. Mental Health Court duty counsel may be able to conduct a Crown pre-trial or judicial pre-trial for Jane if there is time during a court recess that day.

While duty counsel are criminal lawyers and will assist Jane to the best of their ability on the day of her court appearance, they have many people to assist in a day, and as a result they do not have a lot of time to thoroughly review Jane's case and provide detailed legal advice. The more complex Jane's case is, the more likely she would benefit from retaining her own counsel.

► Helpful Hint: Working with Duty Counsel

Remember duty counsel have many people to assist in a day. Jane should consider attending 30 minutes before court starts to try to maximize her time with duty counsel.

Jane should bring her disclosure and Crown screening form with her, and write down any questions she has in advance.

THE PRE-TRIAL / PRE-PLEA STAGE

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THE PRE-TRIAL / PRE-PLEA STAGE

The length of the pre-trial / pre-plea stage will vary dramatically depending on whether Jane is in custody or out of custody.

If Jane is in custody then it is important that the case move quickly so that Jane spends as little time in custody as possible before the case is resolved. If Jane is out of custody, then she has more time to consider her options and decide how she wants to proceed.

OUT OF CUSTODY

Every case is unique, but the usual progression for Jane's case when she is out of custody would be as follows:

1. Release from custody by the police or at bail court.
2. Appear in first appearance / adjournment court approximately 2-4 weeks after release.
3. If Jane has not retained her own defence counsel by her first appearance then she can request the assistance of duty counsel.
4. At the first appearance Jane will be given disclosure (her copy of the Crown's case) and her Crown screening form, which outlines the Crown's position on sentence.
5. The Crown will likely advise the court at Jane's first appearance whether the charges are being proceeded with by summary conviction (less serious) or by indictment (more serious)
6. If the Crown is aware of Jane's mental health issues the screening form may suggest Mental Health Diversion or if in the Region of Waterloo - Mental Health Court.
7. If the Crown is not aware of, or is unsure of, Jane's mental health issues, and Jane wants to apply for Mental Health Diversion, Jane may wish to advise the court or her defence counsel / duty counsel of her wishes.
8. If Jane is being offered a regular diversion program she may enter the program at her first appearance, or adjourn the case to consider whether she wants to participate in the program.
9. If Jane is not being offered diversion then her case will likely be adjourned for 2-3 weeks for Jane to do the following:
 - Review her disclosure; and
 - Apply for Legal Aid, and, if granted, retain counsel; or
 - Retain a defence counsel with her own funds; or
 - Meet with the Mental Health and Justice Support Coordination staff if she is considering Mental Health Diversion; and
 - Discuss with her defence counsel or other supports what she wants to do with her charges
10. Jane's case will likely be adjourned 2 to 3 more times for Jane to work through the above options. After that Jane will have to set a date for either a guilty plea or a trial.

11. On average the pre-plea / pre-trial stage from Jane's first appearance to a guilty plea will be 30-60 days, whereas the period from her first appearance to a trial in the Ontario Court of Justice will be approximately 4-7 months. If Jane is charged with an indictable offence and chooses to have a trial in the Superior Court of Justice then the time between her first appearance and trial will be longer.

IN CUSTODY

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

REGION OF WATERLOO MENTAL HEALTH COURT

If Jane's case is in the Region of Waterloo's Mental Health Court, the pre-plea / pre-trial stage may be longer than it would be in regular court, as it may be beneficial for Jane to prove to the Crown and/or the Court that she is seeking help for her mental health issues. The Mental Health Court will allow Jane more time for that purpose.

CROWN RESOLUTION / PRE-TRIAL MEETING

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

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

If Jane has chosen to plead guilty, a plea resolution will be discussed at the pre-trial, including what charge(s) Jane will be pleading to, what facts will be provided to the Justice, and what the Crown's position on sentence will be.

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

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

► Helpful Hint: When to schedule a pre-trial

It is best for Jane to wait to schedule a pre-trial until after her first appearance so that she can receive her disclosure and review the case against her prior to her pre-trial.

JUDICIAL PRE-TRIAL

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

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

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



Guelph Police Service Headquarters: Courtesy of Guelph Police Service

SUMMARY OFFENCES VS. INDICTABLE OFFENCES

During the pre-trial stage the Crown will advise the court as to how the Crown will be proceeding on the charges. There are two options: 1. By indictment or 2. By summary conviction.

1. By Indictment

Some offences must be prosecuted by indictment. These offences are called “straight indictable” offences. These are the more serious offences in the Criminal Code. Examples of straight indictable offences include:

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

2. By Summary Conviction

At the other end of the scale are offences that must be prosecuted by summary conviction. These are called “straight summary” offences. Examples of straight summary offences include:

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

Hybrid Offences

Most offences in the Criminal Code are hybrid offences, meaning the Crown can choose to proceed by either indictment or summary conviction. Examples of hybrid offences include:

- Assault
- Assault with a weapon
- Sexual assault
- Theft under \$5000
- Mischief under \$5000

The Crown will consider a number of factors when deciding whether to proceed by indictment or by summary conviction. The most important factor to consider is what the expected sentence might be should Jane be found guilty. Summary conviction offences have either a 6 month or a 18 month maximum jail sentence. If the facts of the case and/or Jane’s criminal record are such that a more significant penalty is possible, then the Crown will likely elect to proceed by indictment.

THE GUILTY PLEA

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THE GUILTY PLEA

If Jane is not eligible for diversion, and after careful consideration has decided to plead guilty, then she can do so in the regular guilty plea court.

A plea is considered a significant sign of remorse and will be considered as a mitigating factor. Therefore, the sentence on a plea is usually considerably less than the sentence Jane would receive after a trial. This is not because Jane is punished for having a trial, as that is her right. Rather, Jane is given credit for pleading guilty, showing her remorse, and saving the victim(s) and witness(es) from having to testify.

If Jane has retained a defence counsel, he/she will assist her with the plea. In many cases Jane's defence counsel will have had a resolution meeting with the Crown before Jane's plea to work out a plea resolution. A plea resolution will ensure that Jane is aware of what charge(s) she will plead to, what charge(s) will be withdrawn, what facts she will admit, and what the Crown's sentence position will be.

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



Wellington Country Operations Centre (Fergus)
Courtesy of Wellington Country OPP

Jane must understand that despite whatever her's, or the Crown's, sentence position is, the final decision always rests with the Justice. The Justice may agree with Jane's position, or agree with the Crown's position, or he/she may sentence Jane to something different from either position. If the Crown and Jane agree on a sentence position, which is called a "joint submission", then it is unlikely that the Justice will change that position, unless he/she feels that the joint submission will bring the administration of justice into disrepute.

Before Jane is arraigned on the charge(s) and enters a guilty plea, the Justice will ask her defence counsel / duty counsel or Jane directly if:

- Jane is entering her plea voluntarily,
- if she accepts the facts that will be the basis of the plea,
- if she understands the consequences of a plea, and

- if she understands that regardless of whether a plea resolution has been discussed, the final sentencing decision rests with the Justice.

After the plea inquiry, Jane will be arraigned on the charge(s) and she will plead guilty. The Crown will then read in the facts of the case, and the Justice will ask Jane if she agrees with what the Crown read. Jane's defence counsel or duty counsel will answer on her behalf, and either agree to the facts as alleged or make some minor changes. The Crown must agree with these changes, or else the plea will be struck because the Crown and Jane have not agreed on the facts behind the charge(s).

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

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

- A pre-sentence report to be prepared;
- A psychiatric assessment to be done;
- Jane to go to counselling or a rehabilitation program;
- Jane to obtain restitution for the victims of the offence(s);
- The Crown to get a Victim Impact Statement from the victim(s).

If Jane's sentencing is adjourned, her bail terms remain in place until the sentencing is complete.

THE TRIAL



THE TRIAL

Jane, like every other accused, is innocent until proven guilty and she has the right to insist that the Crown prove the case against her.

If Jane is charged with a summary conviction offence(s), either straight summary offence(s) or a hybrid offence(s); and the Crown elects to proceed by summary conviction, then she must have her trial in the Ontario Court of Justice.

If Jane has retained a defence counsel, he/she will represent her at the trial. If Jane is self-represented then she must represent herself, as duty counsel cannot assist her with a trial.

At a preliminary inquiry the Crown must call witnesses to prove that it has enough evidence to send Jane to trial. Jane's defence counsel (or Jane, if she is self-represented) can request that the Crown call certain witnesses that Jane wants to hear from. Jane can also call witnesses for her defence if she wishes to do so.

At a trial the Crown must call evidence to prove Jane's guilt beyond a reasonable doubt. Jane is not required to prove anything, and she can choose to remain silent and see whether the Crown can prove its case. Jane can also choose to call evidence to try to raise a reasonable doubt as to the Crown's case.

Every trial is unique, and can unfold in many ways, but the basic trial process is as follows:

- Jane is arraigned and pleads not guilty;
- The Crown calls witnesses against Jane. The Crown questions each of their witnesses and Jane's defence counsel has an opportunity to cross-examine each witness. Depending upon what is said in cross-examination, the Crown has a limited right to re-examine their witnesses;
- The Crown closes its case against Jane, and the defence counsel decides whether or not to call defence evidence;
- If Jane's defence counsel chooses not to call defence evidence then the Crown must proceed with their closing argument, followed by defence counsel's closing argument, and then the Justice will render a verdict of guilty or not guilty;
- If Jane's defence counsel calls defence evidence, it may or may not include calling Jane to the stand. If Jane does testify on her own behalf, she will usually testify before any other defence witnesses, so that she cannot be accused of tailoring her evidence to match her witnesses' evidence;
- Jane's defence counsel will question their defence witnesses, and the Crown will have the right to cross-examine those defence witnesses, including Jane. Depending upon what is said in cross-examination, the defence counsel has a limited right to re-examine their defence witnesses;
- If the defence calls evidence, then the Crown may choose to call rebuttal evidence if necessary;
- If the defence calls evidence, then the defence must give their closing submissions to the Court first, and the Crown's closing submissions will follow;

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

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

- A pre-sentence report to be prepared;
- A psychiatric assessment to be done;
- Jane to do counselling or a rehabilitation program;
- Jane to obtain restitution for the victims of the offence(s);
- The Crown to obtain a Victim Impact Statement from the victim(s).

If Jane's sentencing is adjourned, the bail terms remain in place until the sentencing.

Jane has every right to represent herself at trial, and if she does so the Crown and court will make a concentrated effort to assist her. However, trials can be complicated. Jane may be at a disadvantage due to not having any legal training. As a result, Jane should seriously consider hiring a defence counsel, either with her own funds or with Legal Aid.

JUDGE-AND-JURY TRIALS

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

Jane and her defence counsel will play an active role in picking the Jury, as will the Crown.

Jury trials are often more complex than Judge-alone trials because the Jury has to be instructed on the law, and it is not unusual for the Court to have to break more frequently to permit the Justice, defence counsel, and the Crown to discuss legal issues in the absence of the Jury.



Superior Courthouse, 74 Woolwich Street, Guelph

HOW JANE'S MENTAL HEALTH ISSUES MAY AFFECT HER TRIAL

The two main ways in which Jane's mental health issues may affect her trial are her fitness to stand trial, and whether she is not criminally responsible for her charge(s).

Fitness to Stand Trial

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

- understanding the nature or object of what happens in court,
- understanding possible consequences of what happens in court, or
- communicating with and instructing her lawyer.

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

Not Criminally Responsible (NCR)

The defence of "not criminally responsible on account of mental disorder" is contained in section 16 of the Criminal Code. If the Justice finds that Jane committed the offence(s), but also finds that because of her mental disorder, Jane did not appreciate the nature and quality of her act or know that it was wrong, then Jane will be found not criminally responsible.

THE SENTENCING

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THE SENTENCING

If Jane is found guilty after a guilty plea or after a trial, the next step is Jane's sentencing.

As stated in previous chapters, Jane's sentencing can occur immediately after she is found guilty, or her case can be adjourned for various reasons.

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

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

After hearing from the Crown and defence counsel / duty counsel, and reviewing all of the exhibits, the Justice will ask Jane if she has anything to say. Jane has no obligation to say anything, but if she wants to address the Court, this is the time to do so.

The Justice will then decide the appropriate sentence for Jane. Depending on the charge(s), there may be minimum sentences that the Court cannot reduce. Examples of such charge(s) include impaired driving offences, certain firearm offences, and certain sexual offences.

Possible sentences include:

- **Absolute Discharge:** Jane is found guilty, but not convicted. She is discharged from the moment she is sentenced.
- **Conditional Discharge:** Jane is found guilty, but not convicted. She is discharged upon successful completion of a period of probation of up to three years.
- **Fine:** Jane is found guilty, convicted, and ordered to pay a monetary penalty. A fine can be on its own, or it can be combined with probation or custody.
- **Probation Order:** Jane is found guilty and convicted, unless the probation is attached to a conditional discharge. Probation is a period of supervision for up to three years. Jane will have to follow certain terms in the order, including that Jane must report to a probation officer. A probation order can be ordered with a conditional discharge, a suspended sentence, a fine, or a period of custody of two years or less.
- **Suspended Sentence and Probation:** Jane is found guilty and convicted. The sentence that the Justice would have imposed is suspended pending a period of probation for up to three years. If Jane finishes the probation without breaching any of the terms, the sentence is complete. If Jane breaches a term of her probation she can be charged with the offence of breach of probation, and the Crown can also apply to have the Justice re-sentence her on the original charge(s) as well.

- **Conditional sentence:** Jane is found guilty and convicted. She is sentenced to a period of imprisonment, but allowed to serve that custodial sentence in the community, under terms stricter than on a probation order. A conditional sentence can last up to two years less a day. Terms may include house arrest and wearing an electronic monitoring anklet. Not all offences are eligible for a conditional sentence. During the conditional sentence, Jane will be monitored by a conditional sentence supervisor (a probation officer).
- **Custody / Imprisonment:** Jane is found guilty and convicted. She is sentenced to a term of imprisonment. If the sentence is under two years she will serve her sentence in a provincial reformatory. If the sentence is two years or more, she will serve it in a federal penitentiary. If the sentence is less than 90 days, the Justice may allow her to serve the sentence intermittently, in which case she serves her sentence on only certain days of the week, usually on weekends.

If Jane is found guilty of more than one offence, her sentence can be different for each offence. For example, Jane may be sentenced to a fine on one charge, and probation on another. The sentences can be concurrent, meaning they run at the same time as each other, or consecutive, meaning they run one after the other.

There are certain orders that are also a part of sentencing, depending on the charge(s) that Jane is found guilty of. These orders can include the following:

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

PROBATION/PAROLE

Community supervision may be required as part of Jane's sentence after she has completed her time in custody. A probation/parole officer will work with the individual to develop a plan that:

- meets the individual's goals;
- reduces the chance of re-offending;
- monitors compliance of court ordered conditions.

In Waterloo Region, Probation Officers can make referrals to the Canadian Mental Health Association Probation Support Coordinator. In this program, the Probation Support Coordinator supports individuals with mental health and/or concurrent disorders after a thorough assessment identifies that they are struggling with mental health issues related to their criminality.

THE APPEAL

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THE APPEAL

If Jane feels the Justice made an error in finding her guilty and/or in the sentence imposed, she has a right to appeal either or both decisions to a higher court. Jane must appeal based on an allegation of an error of law, a factual error, or a combination of both. She cannot simply appeal because she is unhappy with the result.

If Jane is found unfit to stand trial or not criminally responsible by reason of mental disorder (NCR) she also has the right to appeal to a higher court.

If Jane is found guilty and sentenced, or found unfit to stand trial, or found NCR on a summary conviction offence, she must appeal to the Superior Court of Justice, located at 74 Woolwich Street, in Guelph or at 85 Frederick Street, in Kitchener.

If Jane is found guilty and sentenced, or found unfit to stand trial, or found NCR on an indictable offence, she must appeal to the Ontario Court of Appeal, located in Toronto.

There are strict time limits on appeals, usually 30 days after the sentence, or unfit to stand trial finding NCR finding, so it is important for Jane to decide quickly whether she wants to appeal.

The Crown also has a right to appeal an acquittal, a sentence, a finding of unfit to stand trial, or a finding of NCR. The Crown's right to appeal is more limited than Jane's.

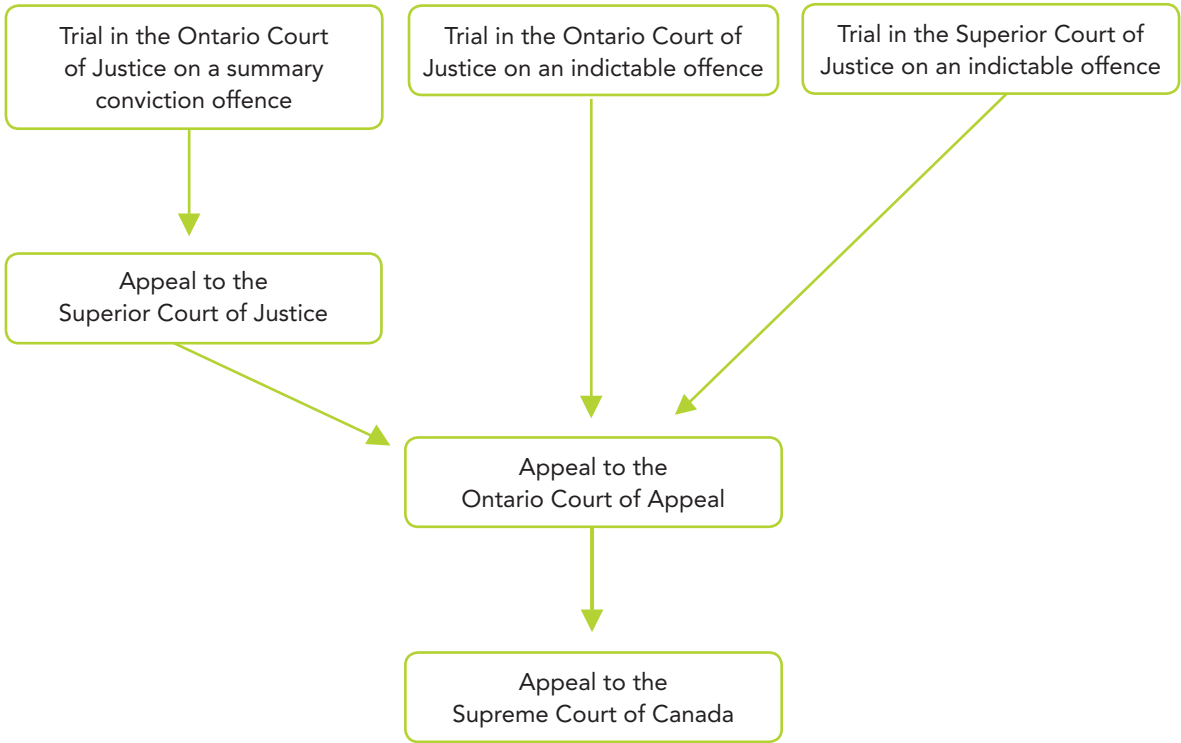
After hearing the appeal and considering the arguments made by both Jane and the Crown, the Appeal court can come to one of the following decisions:

- To dismiss the appeal;
- To allow the appeal and order a new trial;
- To allow the appeal and enter an acquittal;
- To allow the appeal and enter a guilty verdict;
- To allow the appeal and vary the sentence;

Jane has the right to represent herself at the Appeal, but appeals are often very technical and based on complex legal arguments. Even if Jane represented herself at the guilty plea or trial she may still want to consider retaining a defence counsel to assist with the appeal.

Not all defence counsels have experience with appeals. Even if Jane was content with the defence counsel that she retained for the guilty plea or trial, she may want to hire a different counsel for the appeal.

THE APPEAL PROCESS



MENTAL HEALTH DIVERSION AND MENTAL HEALTH COURT

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MENTAL HEALTH DIVERSION AND MENTAL HEALTH COURT

Two alternatives to prosecution may be offered to Jane, depending on a number of factors:

- Mental Health Diversion is available in Guelph, Wellington County and Waterloo Region
- Mental Health Court is only available in the Region of Waterloo

MENTAL HEALTH DIVERSION

Mental health diversion is generally offered to those who are charged with a minor to moderate criminal charge(s) with no criminal record or a limited one.

It is solely the Crown's decision as to whether mental health diversion will be offered to Jane. The Crown will be guided by the Crown Policy on mental health diversion. Certain offences are almost always eligible for diversion: shoplifting, minor mischief charges, causing a disturbance. Other offences are never eligible for diversion: murder, firearm offences, offences against children, hate crimes, drinking and driving offences, domestic assaults. Most offences fall somewhere in between, and it is up to the Crown to decide if the facts of a case make it suitable for diversion.

In making the decision as to whether Jane should be offered diversion, the Crown will seek the opinion of the Canadian Mental Health Association (CMHA) Mental Health Court Coordinator. The Crown will also often seek input from any victims of the offence.

To be eligible for mental health diversion the Crown must have a reasonable prospect of conviction in Jane's case; it must be in the public interest to proceed with the charge(s); Jane must be fit to stand trial; and there must be a connection between the charge(s) and Jane's mental health issues. Jane does not have to admit guilt prior to entering into mental health diversion. This is different from regular adult diversion which requires an admission of guilt.

Jane has no obligation to accept a diversion program. The benefit of mental health diversion is that if Jane is successful in completing the diversion program, the charge(s) will be stayed or withdrawn and not recommenced unless there is a significant reason to do so.

The CMHA Mental Health Court Coordinator will work with Jane to develop a diversion plan. If Jane is already working with another community agency, such as Waterloo Regional Homes for Mental Health or the Developmental Services Resource Centre, then that agency's Support Coordination staff will work with Jane and the CMHA Mental Health Court Coordinator to develop a diversion plan. Every mental health diversion plan is uniquely tailored to the accused, but generally the process is as follows:

- If Jane agrees to mental health diversion her case will be adjourned 6-8 weeks to allow her to start the process;
- Jane must sign a release allowing the CMHA Mental Health Court Coordinator to advise the court of her progress;
- If Jane is deemed suitable for mental health diversion, a report recommending her for the program will be submitted to the Crown;
- If the Crown agrees that Jane is a suitable candidate, the Crown will request that the charge(s) be stayed or withdrawn at Jane's next court appearance, and will not re-commence the charge(s) unless Jane withdraws from the diversion program against the Mental Health Court Coordinator's advice.

MENTAL HEALTH COURT IN THE REGION OF WATERLOO

Across Ontario there are about 25 mental health or therapeutic courts. These courts operate on various levels, ranging from designated Mental Health Courts to ones that accept mental health cases one or two times per month. The landscape of Mental Health Courts in Ontario is constantly changing with some courts closing and new ones being created. The Region of Waterloo has a Mental Health Court. It began in 2005 and runs once a week (currently every Tuesday) until the cases in the court that day are completed.

The objectives of the Mental Health Court are:

- To deal with accused with mental disorders in an effective manner and in accordance with *Ontario's Mental Health Act* and the *Criminal Code of Canada*;
- To hold accused accountable for their actions while providing effective treatment and/or support in the least restrictive fashion;
- To provide proper, as opposed to special, attention to accused persons with mental disorders;
- To protect both the rights of the public and the accused while at the same time maintaining the integrity of the criminal justice system.

The Mental Health Court is a voluntary court. Jane cannot be forced to enter the Court, she must want to have her case heard in the Mental Health Court. If Jane's case has been adjourned into the Mental Health Court, Jane is also free to change her mind and return it to regular court at any time.

To be eligible to have her case heard in the Mental Health Court, Jane must be charged with a criminal offence in the Region of Waterloo and have:

- An identified mental disorder or symptoms of a mental disorder, which includes both an Axis I or an Axis II diagnosis; and/or
- A developmental delay; and/or
- Another disorder such as an Acquired Brain Injury, Fetal Alcohol Spectrum Disorder, dementia, etc.,

AND

- There must be a connection between Jane's mental disorder and the offence. A connection may be readily apparent on the facts of the case, or it may not be as obvious, but there must be a connection. For example:
 - Jane might have schizophrenia, but her disorder is under control and she committed the offence(s) for another reason. In such circumstances she will not be eligible for Mental Health Court;

- If Jane has a concurrent diagnosis, i.e. mental health and addiction issues, she will be eligible for the Mental Health Court if there is a connection between her offence(s) and her concurrent disorders.
- If Jane is charged with a domestic violence offence she will be eligible for the Mental Health Court as long as there is a connection between her offence(s) and her mental disorder.



Waterloo Regional Police Service-North Division: Courtesy of Waterloo Regional Police Service

If Jane is a Youth (under 18) then she will only be accepted into the Mental Health Court if there are exceptional circumstances that warrant it. Most youth matters stay in Monday Youth Court and a Lutherwood Youth Court Mental Health Worker attends to assist.

Not all mental disorders/illnesses are eligible for Mental Health Court, e.g. if Jane's mental disorder is a paraphilia or is drug-induced, she is not eligible for Mental Health Court.

Mental Health Court is a criminal court; therefore, it must work within the law as defined by the *Criminal Code of Canada*, other criminal statutes, and criminal case law. In that way it is the same as any criminal court in the province. However, the Region of Waterloo's Mental Health Court is unique in that it has:

- Justices that have extensive experience in mental health cases;
- A Crown that has experience and interest in mental health cases and knowledge of *Ontario's Mental Health Act*, the forensic psychiatric system, and community mental health resources;
- Duty counsel who have experience and interest in mental health cases;
- The CMHA-WWD Mental Health Court Coordination staff are available in court; and
- Other community mental health resources available to attend court as needed

The following Court proceedings and practices are a part of the Mental Health Court:

- Diversion;
- *Ontario's Mental Health Act* orders (under sections 16, 21, 22);
- Bail release orders;
- Crown pre-trials;
- Judicial pre-trials;
- Criminal Code s. 672 assessment orders;
- Fitness hearings;
- NCR hearings;

- Other Criminal Code s. 672 hearings;
- Guilty pleas; and
- Trials / preliminary inquiries under 3 hours in length.

There are a number of things that cannot be done in Mental Health Court. These include:

- **Contested bail hearings:** If Jane is in custody and wants a bail hearing, and the Crown is not consenting to her release, then Jane must have a bail hearing before entering the Mental Health Court.
- **Trials or preliminary inquiries over 3 hours:** Due to time constraints these will be heard on another day, but Jane's case will still be heard by a Justice from the Mental Health Court.
- **Override other Crown Policy Memoranda and Directives, e.g. domestic violence policies, firearms policies:** Certain Crown policies take priority over others. For example, firearms offences are considered extremely serious and are prosecuted fairly but vigorously. If Jane is charged with a firearm offence, she may be facing a minimum sentence of imprisonment that she cannot avoid by entering Mental Health Court.
- **Force Jane to take medication:** This is something that Jane's family and friends may want. However, the Mental Health Court cannot force Jane to take medication against her will. A medication term can be added as a term of probation, but only with Jane's consent.
- **Force Jane into a hospital:** While a Justice can sign a Form 2 under *Ontario Mental Health Act* to send Jane to the hospital for a preliminary assessment by a physician, the Mental Health Court cannot force the hospital to accept Jane, nor force Jane to stay against her will. It is the hospital's decision whether to admit Jane as an involuntary or a voluntary patient.
- **Force Jane into a residential treatment program:** Jane cannot be sentenced to reside in a residential treatment program for a mental disorder or addiction issue unless she consents to go and is eligible for such a sentence (Jane would have to be eligible for a conditional sentence, there would have to be a residential program willing to take her as part of the conditional sentence, and the Court must agree that it is an appropriate sentence).
- **Order assessments easily:** There is no provision in the Criminal Code for a general psychiatric assessment. Assessments can only be ordered under the Criminal Code for specific reasons, including the following: Fitness to Stand Trial, Not Criminally Responsible (NCR), Infanticide, and Dangerous / Long Term Offender cases. In rare cases, *Ontario's Mental Health Act* can be used for a general assessment, but this is usually reserved for violent offences and is intended to assess Jane's risk to the community.

Mental Health Court is held in the Ontario Court of Justice. It deals with both indictable matters and summary conviction matters. There is no Mental Health Court in the Superior Court of Justice. Therefore, if Jane chooses to have a trial or plea in the Superior Court of Justice on an indictable charge, then she can remain in the Mental Health Court up to and including her preliminary inquiry, but she will leave the Court then her case is transferred to the Superior Court for plea or trial.

Jane may come before the Mental Health Court with a long history of searching for assistance in the community. While the Mental Health Court is full of dedicated people willing to assist Jane, they can only work within the limits of the criminal justice system and available community resources. They will work hard to find a solution for Jane but they may not be able to find the best solution for Jane within the current restraints or existing system.

FORM 2

Any citizen can appear in front of a Judicial Officer and request that a Form 2 be issued for Jane's apprehension under *Ontario's Mental Health Act*. That citizen must provide evidence under oath that meets the criteria required under section 16 of *Ontario's Mental Health Act*. The evidence usually relates to Jane's danger to herself or others, but there are other factors that can be considered.

If the Judicial Officer is satisfied that the evidence is credible, reliable, and meets the criteria listed in section 16, the Form 2 will be issued, directing the police to apprehend Jane and take her to the nearest hospital with mental health facilities.

A Form 2 only gets Jane to the hospital. It remains the hospital's decision whether or not to admit her.

If Jane has been arrested for a criminal offence and is in custody, then absent a release on bail, the *Criminal Code* custody takes precedence over *Ontario's Mental Health Act - Form 2*. The police may choose to keep Jane in custody and execute the Form 2, in which case they will keep Jane under guard at the hospital, or they may choose to keep her in custody and alert the prison to Jane's mental health needs. If a citizen wishes to have a Form 2 issued he/she must attend at the Criminal Court Office at the Ontario Court of Justice, and ask for a Form 2 information package and a time to appear in front of a Judicial Officer. The court office will give the person the HERE 24/7 contact information (1-844-437-3247). HERE 24/7 will assist the individual in completing the package.

PSYCHIATRIC ASSESSMENTS

The court may order other psychiatric assessments from forensic psychiatrists as the need arises. However, such assessments must have a specific purpose under the criminal law; general psychiatric assessments are not available.

The three most common assessments are:

- Fitness assessments;
- Criminal responsibility assessments; and
- Risk assessments to assist with sentencing.

UNFIT TO STAND TRIAL (FITNESS)

Every accused is presumed fit to stand trial. If there is a possibility that Jane is unfit to stand trial, then all proceedings must stop until that issue is decided. This is because it would be unfair for criminal charges(s) to continue if Jane does not understand what is going on, or what jeopardy she may be in, or if she cannot communicate with her counsel.

In the Region of Waterloo, most fitness issues are dealt with in the Mental Health Court because the Crown, defence counsel /duty counsel and Justices in the Court have experience with fitness cases.

The Crown, defence, or Justice can raise concerns about Jane's fitness. Often, all three agree that there is reason to be concerned that Jane may be unfit. In some situations it may be easy to tell that Jane is unfit, for example if she is clearly delusional and rambling in court. In other situations it may be extremely difficult to determine if Jane is unfit to stand trial, and it may only become apparent to her defence counsel or duty counsel when they try to obtain instructions from her.

In some cases the fitness issue can be resolved by the Justice asking Jane some questions about her case. Questions commonly asked include:

- Who is the Crown? What is their role?

- Who is your defence counsel? What do they do?
- What is the Justice's role?
- What can happen to you if you are found guilty?

If Jane's answers show that she understands the court process and its consequences, then she will likely be found fit and the case will continue.

If Jane's answers raise concern about whether she is fit to stand trial, or if it is a case in which it is obvious from the start that Jane may be unfit, then a forensic psychiatric assessment will be ordered to explore the fitness issue.

The Crown, defence counsel / duty counsel, or Justice can request a fitness assessment. The Justice must be satisfied that there are reasonable grounds to believe that the assessment is necessary to determine whether Jane is unfit to stand trial.

If the Justice has reasonable grounds to believe that Jane may be unfit to stand trial and Jane does not have a defence counsel, then the Justice must appoint counsel for her. This is done prior to the fitness assessment being ordered.

A fitness assessment is usually up to 5 days in length, although it can be up to 30 days if the Crown and defence counsel agree. If Jane is in custody then a fitness assessment may be ordered to be done in one of the forensic psychiatric hospitals in Ontario, in which case Jane will be remanded to that hospital.

Before the Justice tries the issue of fitness it must be determined whether the charge(s) Jane is facing are summary conviction matters or indictable matters. If there are any hybrid charge(s) that the Crown has not made their election on, the Crown must tell the Justice and Jane how it intends to proceed. Further, the Justice may decide not to try the issue of fitness until the Crown has proven it has a solid case against Jane.

If the forensic psychiatrist who assesses Jane feels that she is fit to stand trial, and both the Crown and defence counsel agree with the psychiatrist, then the Justice will likely declare that Jane is fit and the case will resume. However, if either the Crown or defence counsel disagrees with the forensic psychiatrist's opinion then there may be a request for another assessment and/or an argument as to whether Jane is fit or unfit.

If Jane is found fit, but there are later concerns about whether Jane is unfit, the issue can be explored again at any time. If Jane is in custody, and found fit, but there is a risk that she may become unfit if detained in a regular prison, then the Justice can order that Jane be remanded to one of the forensic psychiatric hospitals in the province in order that she remains fit to stand trial.

If the forensic psychiatrist who assesses Jane feels that she is unfit to stand trial, Jane is returned to Court and if the Crown and the defence counsel agree that she is unfit, then the Justice will likely declare Jane unfit to stand trial. However, if either side disagrees with the forensic psychiatrist's opinion then there may be a request for another assessment and/or an argument as to whether Jane is fit or unfit.

If Jane is found unfit to stand trial then there are two options: Try to make Jane fit; or send her case to the Ontario Review Board (ORB).

The sections that allow a forensic psychiatric hospital to try to make Jane fit are the only sections under the Criminal Code that allow treatment against Jane's will. Sections 672.58 to 672.62 have strict criteria that must be met for a "make fit" order to be made. This is because it is recognized

that it is highly intrusive to Jane to force her to take treatment that she may not want. Therefore the sections try to balance Jane's rights with the benefits to Jane of being fit to stand trial. All of the following criteria must be met for a "make fit" order:

- The Crown must give Jane notice in writing of their intention to seek the order;
- Jane must be given the chance to argue against the order and call evidence at that argument;
- The order cannot be for more than 60 days;
- A forensic psychiatrist must testify:
 - That he/she has assessed Jane and she is currently unfit to stand trial;
 - That he/she will use a specified treatment (usually psychotropic medication), and that the treatment will likely make Jane fit to stand trial within 60 days;
 - That the risk of harm to Jane from the specified treatment does not outweigh the expected benefit (that she will become fit);
 - That the specified treatment is the least restrictive and least intrusive method that could make Jane fit within the 60 days;
- One of the forensic psychiatric hospitals in the province is willing to take Jane;
- The hospital must not use psycho-surgery or electro-convulsive therapy.

If Jane comes back from the "make fit" order fit to stand trial, then the case resumes.

If the Justice chooses not to issue a "make fit" order, or if Jane comes back from the "make fit" order still unfit to stand trial, then Jane's case is transferred to the jurisdiction of the Ontario Review Board. That transfer can happen in one of two ways: The Justice can choose to make a disposition in Jane's case and send the case to the ORB, who will hold another disposition hearing within 90 days; or the Justice can decline to make a disposition and send the case to the ORB, and the ORB will hold a disposition hearing within 45 days.

If Jane becomes fit to stand trial while she is under the jurisdiction of the ORB she will be sent back to the Court, a Justice will hold his/her own hearing as to whether Jane is fit or unfit, and if Jane is fit the case will resume. If the Justice finds that Jane is unfit, Jane will return to the Ontario Review Board.

If Jane remains unfit to stand trial she will remain under the supervision of the ORB as long as the Crown maintains the criminal charge(s) against her. If Jane remains unfit, then every two years the Crown must prove to the Court that they still have a case against her. This is usually done by filing affidavits from witnesses, and Jane has a right to challenge that evidence. If the Crown can no longer prove its case, or decides not to continue with the case, then Jane is no longer under the supervision of the ORB.

If the Crown continues to prove it has a case against Jane, and Jane remains unfit to stand trial, but the Ontario Review Board has concluded that Jane will likely never become fit and that she is not a significant threat to the safety of the public, then the ORB can send the case back to the Court and request that the Court stay the charge(s) against Jane. If Jane remains unfit and the Crown continues to prove that it has a case against Jane, and Jane remains a significant threat to the safety of the public, then Jane may stay under the jurisdiction of the Ontario Review Board for many years.



Canadian Mental Health Association Waterloo Wellington Dufferin, 9 Wellington Street, Cambridge

Should Jane Raise the NCR Defence?

There are complex issues to consider when deciding whether to raise the defence of not criminally responsible by reason of mental disorder.

If Jane is considering raising the defence she may wish to seek advice from a defence counsel with experience in NCR cases.

NOT CRIMINALLY RESPONSIBLE (NCR)

Jane is presumed to be criminally responsible for her charges(s), unless she is proved otherwise on a balance of probabilities. Although traditionally called a defence, both Jane and the Crown can allege that she is not criminally responsible for her charge(s). As with the fitness cases, most NCR cases in Waterloo Region are heard by the Mental Health Court.

If Jane alleges that she is not criminally responsible for her charge(s), she can do so at any time. If the Crown alleges Jane is not criminally responsible, they can only do so if either Jane has raised the issue first, or after the Court has made a finding that Jane committed the offence(s).

Despite the fact that the Crown cannot allege Jane is NCR unless Jane has raised the issue first, or they have proven that Jane committed the offence(s), the Crown may be able to seek an assessment with regard to the issue at any stage. In order to do so, the Crown must convince the Justice that there are reasonable grounds to doubt Jane is criminally responsible on account of mental disorder, and that an assessment is necessary to determine that.

If Jane wants the Justice to order an NCR assessment, she does not have to show reasonable grounds to doubt that she is criminally responsible on account of mental disorder. Jane can ask the Justice for an assessment, and it will be ordered as long as the Justice feels it is necessary. The Justice can also order an assessment with respect to criminal responsibility on his or her motion, although this would be extremely rare.

Assessments with respect to criminal responsibility are more complex than fitness assessments. As a result, they are usually 30 days in duration, and can be up to 60 days if circumstances require. If Jane is out of custody, an assessment will be done by a forensic psychiatrist who will arrange meetings with Jane in the community as required.

If Jane is in custody, an assessment will almost always be done in one of the forensic psychiatric hospitals in the province. While NCR assessments can be done in prison, it is beneficial to have Jane at one of the hospitals where she is under constant observation by psychiatric staff.

The forensic psychiatrist will provide a written assessment for the Court, outlining the evidence he/she considered, his/her opinions on Jane's mental disorder, and an opinion as to whether or not Jane is criminally responsible.

Not all mental disorders qualify for an NCR finding. The mental disorder must be one that rendered Jane incapable of appreciating the nature and consequences of her actions, or from knowing they were wrong. Common mental disorders in NCR cases are schizophrenia, bi-polar disorder, or delusional disorders. Mental disorders that are drug-induced or mental disorders such as anti-social personality disorder do not usually qualify for an NCR defence.

In some cases the assessment will support a NCR defence and both the Crown and defence counsel will agree that Jane is NCR and jointly ask the Justice to find Jane NCR. This can be done after a hearing in which Jane agrees to the facts of the charge(s), or Jane can still insist that the Crown prove the case in a trial, and then move on to consenting to an NCR finding.

In other cases one side may want to have Jane found NCR, but the other side may not. In such cases the side that does not agree may ask the Justice for another assessment and/or argue against the first assessment, and in those cases the Justice decides whether Jane is NCR or not. Jane may plead guilty and agree to the facts of the charge(s) and then argue the NCR issue, or Jane may insist that the Crown prove the case in a trial, and then if she is found to have committed the offence(s), the NCR issue will be argued.

If the Justice finds Jane criminally responsible, then the NCR defence is not available and Jane will be sentenced in the usual manner.

If the Justice finds Jane not criminally responsible by reason of mental disorder, either on the agreement of both sides or after an argument, then the Justice can either send the case to the Ontario Review Board to render a disposition within 45 days, or make his/her own disposition.

The usual practice is for the Justice to send Jane's case to the ORB without making a disposition. However, there may be reasons why the Justice may want to render his/her own disposition. For example, if the Justice is satisfied that Jane is not criminally responsible by reason of mental disorder, and based on all of the circumstances she is not a significant threat to the safety of the public, then the Justice will give Jane an absolute discharge. If this happens then Jane is free to leave and she will not be under the jurisdiction of the Ontario Review Board.

If the Justice makes a disposition other than an absolute discharge, then the case is sent to the ORB and they must hold a disposition hearing within 90 days.

Jane will be under the supervision of the ORB until she is found to no longer be a significant threat to the safety of the public, at which time she will be given an absolute discharge.

THE SPECIAL ROLE OF THE CANADIAN MENTAL HEALTH ASSOCIATION, WATERLOO WELLINGTON DUFFERIN



THE SPECIAL ROLE OF THE CANADIAN MENTAL HEALTH ASSOCIATION, WATERLOO WELLINGTON DUFFERIN

The Canadian Mental Health Association, Waterloo Wellington Dufferin (CMHA-WWD) has a number of staff that provide Mental Health Court Support across Waterloo Region, the City of Guelph and in the County of Wellington. They can help people who are experiencing mental health concerns (whether diagnosed or symptoms suggesting a major mental illness) and who are also charged with a criminal offence in Waterloo, Wellington or Dufferin.

MENTAL HEALTH COURT SUPPORT

If Jane wants assistance while facing criminal charges the Mental Health Court Support Coordination staff is a great first contact.

If Jane wants to access Mental Health Court Support services, she can contact HERE 24/7 at 1-844-437-3247 to request a referral to the appropriate program.

They may also be available on-site at the Courthouse depending on the day/time and court location.

If Jane is charged with a criminal offence and released from custody by the police to attend court at a later date, she may wish to contact the Canadian Mental Health Association prior to her first court date to see what assistance can be offered. If she chooses not to contact the Mental Health Court Support Coordination staff at CMHA-WWD prior to her first appearance, Jane can still request to see him/her at her first appearance. If Jane already has a Mental Health Case Manager involved in her care, then the Mental Health Court Support Coordination staff will work with her existing Case Manager to ensure that they understand the process and can appropriately support her. Jane can also ask the Mental Health Court Support Coordination staff to include other members of her care team, such as her Family Physician, in this process as well.

If Jane is charged with a criminal offence and held in custody for a bail hearing, then Jane can ask an officer in the courthouse cells to speak to the Mental Health Court Support Coordination Staff prior to her appearance in bail court. Also, if the duty counsel / defence counsel or Crown is aware that Jane has mental health issues, they may ask the Mental Health Court Support Coordination Staff to approach Jane. If this happens, it is still Jane's decision whether or not to speak to the staff person.

It is Jane's choice...

CMHA-WWD SUPPORT IS VOLUNTARY. It is Jane's choice whether or not to work with CMHA. Jane will not be ordered to work with CMHA as part of a bail release or probation order.

If Jane chooses to speak to the CMHA's Mental Health Court Support Coordination Staff he/she can assist in a variety of ways, including:

- Assisting Jane in developing a bail release plan;
- Contacting Jane's family / friends / support workers or other members of her care team for her;
- Helping Jane re-connect in the community after being held in custody, arranging for emergency prescriptions if possible, or contacting a shelter if housing is needed;
- Connecting Jane with mental health and/or addictions supports or other community supports that are available in Waterloo, Wellington and Dufferin;
- Providing information to the Crown with Jane's consent as to whether mental health diversion is appropriate;
- Assisting in the development of a mental health diversion plan for Jane if the Crown agrees to diversion;
- Assisting in the development of a mental health non-diversion plan for Jane. This could happen if the Crown does not agree to diversion, but agrees to a lesser sentence if she seeks assistance for her mental health issues, or if Jane simply wants assistance regardless of the Crown's position
- Helping Jane understand the court process and provide support.

The Mental Health Court Support Coordination Staff also assists lawyers and Justices by providing information about local mental health resources, general information on types of mental disorders, treatment options, and preliminary assessments with regard to mental health concerns.

The Mental Health Court Support Coordination staff can also assist other mental health agencies who have clients with criminal charges. They can provide information to the agencies about the court process, suggest options to explore and act as a liaison between the agencies and the Crown and/or defence counsel and/or the court.

► **Helpful Hint: Another CMHA-WWD resource**

CMHA-WWD also offers pre-charge diversion in certain cases. If Jane has committed a minor criminal offence, is not a danger to herself or others, and has no prior criminal record or a very limited one, the police can choose to contact CMHA-WWD and have Jane work on a diversion program instead of laying a charge against Jane.

MENTAL HEALTH COURT SUPPORT STAFF

If Jane agrees to a mental health diversion program or a mental health non-diversion support program, then the Canadian Mental Health Association will assign a Mental Health and Justice Support Coordinator to work with Jane depending on her needs. The types of individuals that might be assigned to Jane include:

- Mental Health Court Coordinator
- Mental Health and Justice Support Coordinator
- Mental Health and Justice Probation Support Coordinator (with a referral from Jane's probation officer and with Jane's consent)

That CMHA Staff member will support Jane as she works on her specific plan (e.g. mental health support plan, bail release plan). If she doesn't already have supports, the Support Coordinator will help Jane get connected to other programs and services in the community, which may include mental health supports, counselling and treatment programs, and/or supports to assist with other aspects

of her life, e.g. housing, education. If Jane is already connected with supports, then the Support Coordination staff will meet with Jane and her existing Mental Health Case Manager on a regular basis to offer assistance on those existing supports and/or to determine if additional supports need to be added.

The length of time that the Support Coordination Staff will work with Jane will vary depending on the supports that are needed, but will not extend beyond 12 months. If supports are needed beyond 12 months, then Jane will work with other longer-term support services offered by CMHA-WWD.

In order to work with the Mental Health and Justice Court Support Coordination staff as part of a Mental Health diversion program Jane must sign a release allowing the CMHA Staff to advise the Crown and the Court how Jane is progressing in the program. Jane does not have to sign a release to participate in a non-diversion support program. Although if she is doing well, she may wish to consider signing so that the Crown and the court can be made aware of her progress.



Canadian Mental Health Association: 147 Delhi St, Guelph

A Bridge between Two Worlds...

All CMHA-WWD Mental Health and Justice Staff are neutral. The Mental Health and Justice Staff are unique from other mental health supports in the community in that they bridge the justice system and community mental health supports.

While the CMHA-WWD Mental Health and Justice Staff work closely with the Crown, they do not work for the Crown. And while they work in the Mental Health Court they do not work for the Court. Finally, while they may support Jane, they do not work for Jane.

While the Mental Health Court Support Staff are excellent resources, it is important for Jane to keep in mind that they cannot replace the assistance of a defence counsel, and in particular they cannot:

- Provide legal advice;
- Be a surety for Jane;
- Appear on Jane's behalf;
- Testify on Jane's behalf;
- Force Jane to seek treatment, including taking medication;
- Guarantee that Jane is accepted as a patient by a psychiatrist or other medical professional.

THE ONTARIO REVIEW BOARD SYSTEM

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THE ONTARIO REVIEW BOARD SYSTEM

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

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

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

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

The Ontario Review Board supervises approximately 1500 accused, and holds over 1900 disposition hearings per year.

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

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

1. The Chair or Alternate Chair;
2. A legal member (a lawyer or a retired Justice);
3. A psychiatrist;
4. Another psychiatrist or a psychologist;
5. A lay-person.

The disposition hearing is a relatively informal process. The parties to Jane's disposition hearing are:

- Jane – represented by defence counsel
- The forensic psychiatric hospital that is caring for Jane
- The Crown

If Jane is found NCR and there is a victim(s) of her offence(s), then that victim(s) has a right to attend the ORB Hearing, and/or provide a Victim Impact Statement(s). If Jane was found unfit to stand trial, then she has never been found to have committed the offence(s), so there is no victim in the legal sense of the word.

► **Helpful Hint: Selecting a Defence Counsel**

Not all defence counsel have experience with Ontario Review Board disposition hearings. These hearings are different than criminal court cases, and Jane may wish to look for a counsel with experience in ORB matters.

THE INITIAL ORB DISPOSITION HEARING

The Court that found Jane unfit to stand trial or NCR will send information to the ORB to assist them with their disposition hearings. This will include a copy of the information or indictment, any assessments that were done, Jane's criminal record (if any), any exhibits filed with the Court, a transcript of the proceedings, and victim impact statements (if any).

If at Jane's disposition hearing the ORB feels that they require a further psychiatric assessment, they can adjourn her hearing and order one.



Waterloo Regional Police Service-South Division
Courtesy of Waterloo Regional Police Service

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

If Jane was found unfit to stand trial, the possible dispositions are:

- **A discharge with conditions:** Jane is allowed to reside in the community and must follow terms outlined in the disposition, and may have to attend appointments at a forensic psychiatric hospital.
- **A detention order:** Jane is ordered detained in one of the forensic psychiatric hospitals in the province and must follow certain terms. The hospital must develop a treatment plan for Jane. The hospital may be given discretion to allow Jane certain access to the community, including even residing in the community, depending on her level of risk.

If Jane was found not criminally responsible by reason of mental disorder, the possible dispositions are:

- **An absolute discharge:** Unless Jane is found to be a significant threat to public safety she will be given an absolute discharge and will no longer be supervised by the ORB.
- **A discharge with conditions:** Jane is allowed to reside in the community and must follow terms outlined in the disposition, and may have to attend appointments at a forensic psychiatric hospital.
- **A detention order:** Jane will be detained in one of the forensic psychiatric hospitals in the province. The hospital must develop a treatment plan for Jane. The hospital may be given discretion to allow Jane certain access to the community, including even residing in the community, depending on her level of risk.

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

ANNUAL ORB DISPOSITION HEARING

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

The goal of the Ontario Review Board system is for Jane's mental disorder to improve so that she can move down the possible dispositions, with the idea that at some point she will be found to no longer

be a significant threat to public safety. For example, if after her first disposition hearing she is ordered detained in a medium security forensic psychiatric hospital, then the goal would likely be to move down to detention in a minimum-security forensic psychiatric hospital, then to detention in a minimum-security forensic psychiatric hospital but given community living privileges, and then to a discharge with conditions. If Jane does very well under ORB supervision she may skip stages, while if Jane relapses, she may move back up to stricter terms.

If Jane is an NCR accused, then the ultimate goal is for Jane to be found to no longer be a significant threat to public safety and to be given an absolute discharge. Once that happens she will no longer be under ORB supervision.

If Jane is unfit to stand trial, and the Ontario Review Board finds she is no longer a significant threat to public safety, she is not entitled to an absolute discharge. Instead, if the ORB feels she is no longer a significant threat to public safety and that she is also likely to never become fit, then the ORB can send Jane back to the Court where she was found unfit and ask that the Court consider staying the charge(s)

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

Every accused under the supervision of the Ontario Review Board is unique and the ORB will consider Jane's case on its own facts. Jane's mental disorder, prognosis, and risk to public safety will all be taken into account.

When deciding Jane's disposition, the Ontario Review Board must consider the following factors:

- The need to protect society from dangerous persons;
- Jane's mental condition;
- Jane's reintegration into society and her other needs.

Further, when making Jane's disposition, the ORB must make the least onerous, least restrictive disposition and terms possible.

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

► **Helpful Hint: Right to Appeal**

Jane has a right to appeal any disposition made by the Ontario Review Board to the Ontario Court of Appeal. She must have a legal basis to do so; she may not appeal simply because she is unhappy with the disposition. If Jane wishes to appeal her disposition, she must do so within 15 days of receiving the reasons for the disposition.

JUSTICE, MENTAL HEALTH, AND COMMUNITY RESOURCES



JUSTICE, MENTAL HEALTH, AND COMMUNITY RESOURCES

POLICE SERVICES IN WATERLOO WELLINGTON

If you need immediate assistance, call 9-1-1

Guelph Police Services

Website: www.guelphpolice.com
Address: 15 Wyndham Street South, Guelph ON N1H 4C6
Phone: Non-Emergency 519-824-1212

Waterloo Regional Police Services

Website: www.wrps.on.ca
Address: **Headquarters**
200 Maplegrove Road, Cambridge, ON N3H 5M1
Central Division
134 Frederick Street, Kitchener, ON N2G 4G3
Rural South Division
34 Peel Street, New Hamburg, ON N0B 2G0
South Division-Cambridge
176 Hespeler Road, Cambridge, ON N1R 6V7
North Division-Waterloo
45 Columbia Street East, Waterloo, ON N2J 4N7
Rural North Division
13 Industrial Drive, Elmira, ON N3B 2Y3

Non-Emergency Phone
Kitchener, Waterloo, Cambridge 519-653-7700
All other areas 519-570-3000
Automated attendant 519-650-8500
Domestic Violence 519-579-9668
Victims Services 519-743-7243
Accident Reporting Centre 519-650-8500 x 8786

Ontario Provincial Police (OPP)

OPP 24-hour Communication Centre: 1-888-310-1122
Website: www.opp.ca

HDS - Cambridge

Address: 500 Beaverdale Road, Cambridge, ON N3C 2V3
Phone: 519-654-015

Centre Wellington Operations Centre - Fergus

Address: 470 Wellington Road 18, Fergus ON N1M 2W3
Phone: 519-846-5930

South Wellington Operations Centre - Rockwood

Address: 5145 Wellington Road 27
Rockwood ON N0B 2K0
Phone: 519-856-1506

North Wellington Operations Centre- Teviotdale

Address: 6725 Wellington County Road 109
Palmerston, ON N0G 2P0
Phone: 519-343-5770

JUSTICE SYSTEM RESOURCES

Crown Attorney's Office

Guelph Office:

Address: 74 Woolwich Street, Guelph ON N1H 6J2
Phone: 519-822-1031

Waterloo Region Office:

Address: 85 Frederick Street, 3rd Floor, Kitchener
ON N2H 0A7
Phone: 519-741-3222

Federal Department of Public Prosecutions (Federal Crown)

Address: 15 Duke Street East, Suite 202
Kitchener, ON N2H 1A2
Phone: 519-571-5778

Legal Aid Ontario

A government agency that provides financial assistance to Jane and other accused who wish to retain counsel but who cannot afford one. Jane must apply either in person, on-line, or over the phone, and must meet certain financial and other conditions

Phone: 1-800-668-8258
Website: www.legalaid.on.ca

Maplehurst Detention Centre Vanier Centre for Women

Maplehurst: The main reformatory for male accused detained in custody awaiting trial / plea / sentence for Waterloo Wellington.

Vanier: The main reformatory for female accused detained in custody awaiting trial / plea / sentence for Waterloo Wellington.

Both are located on Hwy 25 just south of Hwy 401 in Milton

Phone: 1-905-878-8141 (Maplehurst)
Mental Health Office x 8406
Senior Nursing Station (to be used for immediate contact) x 8413
Health Care Manager x 7325
Mental Health Social Worker x 3112
1-905-876-8300 (Vanier)

Ontario Court of Justice – Criminal Court Office

Wellington:

Address: 36 Wyndham Street South
Guelph, ON N1H 7J5
Phone: 519-836-2501

Waterloo Region:

Address: 85 Frederick Street, 1st Floor
Kitchener, ON N2H 0A7
Phone: 519-741-3300

Ontario Ministry of the Attorney General

Website: www.ontario.ca/attorneygeneral
Phone: 1-800-518-7901

Ontario Ministry of Community Safety and Correctional Services

Website: www.mcscs.jus.gov.on.ca
Phone: 1-866-517-0571

Ontario Review Board

A board established by the Ontario government under Part XX.1 of the Criminal Code. The ORB is responsible for the supervision of all accused persons who have been found unfit to stand trial or not criminally responsible by reason of mental disorder.

Website: www.orb.on.ca
Address: 151 Bloor Street West, 10th Floor
Toronto ON M5S 2T5
Phone: 1-416-327-8866

Ontario Superior Court of Justice - Criminal Court Office

Wellington:

Address: 74 Woolwich Street, Guelph ON N1H 3T9
Phone: 519- 822-7961

Waterloo Region:

Address: 85 Frederick Street, 2nd Floor
Kitchener, ON N2H 0A7
Phone: 519-741-3200/3300

Probation and Parole Services

Wellington-Adult:

Address: 75 Farquhar Street, 2nd Floor
Guelph ON N1H 3N4
Phone: 519-837-6306

Waterloo Region – Cambridge Adult:

Address: 150 Main Street, Unit #401,
Cambridge, ON N1R 6P9
Phone: 519-740-5966

Waterloo Region – Kitchener-Waterloo Adult (Centre):

Address: 1780 King Street East, Unit 5
Kitchener, ON N2G 2P1
Phone: 519-571-6105

Waterloo Region – Kitchener-Waterloo Adult (West):

Address: 73 King Street West, 2nd Floor
Kitchener, ON N2G 1A7
Phone: 519-571-7250

Provincial Offences Court – Court Office

Kitchener:

Address: 77 Queen Street North, Kitchener, ON N2H 2H1
Phone: 519-745-9446

Cambridge:

Address: 52 Main Street, Cambridge, ON N1R 6R1
Phone: 519-740-5796

Public Safety Canada

Website: www.publicsafety.gc.ca
Phone: 1-800-830-31186

Regional Treatment Centre, Kingston

A psychiatric hospital inside the Kingston Penitentiary. Male offenders serving sentences of two years or more who have significant mental health issues may be moved by Corrections Canada to the Regional Treatment Centre for treatment.

Address: 560 King Street W., Kingston, ON, K7L 4V7
Phone: 613-536-6901

St. Lawrence Valley Correctional and Treatment Centre, Brockville

A psychiatric hospital attached to the jail in Brockville, Ontario. Male offenders serving a sentence of less than two years who have significant mental health issues may be moved by the Ministry of Community Safety and Correctional Services to the St. Lawrence facility for treatment.

Address: 1804 Highway 2 East, Brockville, ON, K6V 7N2
Phone: 613-341-2870

Youth in Conflict with the Law (Bail Support)

Website: www.waterloobailprogram.ca

Phone: 1-800-818-5017

Kitchener:

Address: 235 Frederick Street, Kitchener, ON N2H 2M7

Phone: 519-745-6591

Cambridge:

Address: 40 Ainslie Street South, Cambridge, ON N1R 3K1

Phone: 519-622-2442

COMMUNITY RESOURCES – HOSPITALS

Cambridge Memorial Hospital

Website: www.cmh.org

Address: 700 Coronation Boulevard

Cambridge, ON N1R 3G2

Phone: 519-621-2330

Guelph General Hospital

Website: www.gghorg.ca

Address: 115 Delhi Street, Guelph ON N1E 4J4

Phone: 519- 822-5350

Groves Memorial Community Hospital

Website: www.gmhc.ca

Address: 235 Union Street East, Fergus ON N1M 1W

Phone: 519-843-2010

North Wellington Health Care

Website: www.nwhealthcare.ca

Louise Marshall Hospital Site:

Address: 630 Dublin Street, Mount Forest ON N0G

2L0 Phone: 519-323-2210

Palmerston and District Hospital Site:

Address: 500 Whites Road , RR# 3

Palmerston ON N0G 2P0

Phone: 519-343-2030

Grand River Hospital

Website: www.grhosp.on.ca

All Sites:

Phone: 519-749-4300 (automated attendant)

519-742-3611 (Switchboard)

Kitchener Site:

Address: 835 King Street West, Kitchener, ON N2G 1G3

In patient adult psychiatric unit: 519-749-4300 x2313

In patient child / adolescent psychiatric unit:

519-749-4300 x4218

Freeport Site - Adult Specialized Mental Health Program:

Address: 3570 King Street East, Kitchener, ON N2A 2W1

Withdrawal Management Services:

Address: 52 Glasgow Street, Kitchener, ON N2G 1G3

Phone: 519-749-4318

COMMUNITY RESOURCES – MENTAL HEALTH

1 844 437 3247 (HERE247)

TTY: 1-877-688-550



Here 24/7 is your front door to the addictions, mental health and crisis services provided by 12 agencies across Waterloo – Wellington – Dufferin. All you need to do is reach out. They do the intake, assessment, referral, crisis, wait list and appointment booking work for these important programs. It's their job to be your guide, figure out your needs and help you navigate the system. This leaves you free to focus on maintaining hope and pursuing recovery.

Canadian Mental Health Association – Waterloo, Wellington, Dufferin Branch

The Canadian Mental Health Association, Waterloo Wellington Dufferin promotes the mental health of all, and supports the recovery of people experiencing mental health issues.

For general information not related to accessing services, please call 1-844-CMHA-WWD (264-2993)

Website: www.cmhawwd.ca

Wellington:

Address: 147 Delhi St., Guelph, ON, N1E 4J3

234 St. Patrick St. E., Fergus, ON N1M 1M6

Waterloo Region:

Address: 67 King St. E., Kitchener, ON, N2G 2K4

1 Blue Springs Dr., Waterloo, ON , N2J 4M1

3-9 Wellington St., Cambridge, ON N1R 3Y4

Self Help Alliance

The Self Help Alliance is a consumer organization that provides services that reflect the values and principles of peer support and recovery. The Self Help Alliance offers a wide range of peer run groups that provide opportunities for individuals to learn skills that enable people to understand their process of recovery. By developing relationships with peers that share similar experiences, individuals can become connected with their community and can learn how best to support their recovery process.

Website: www.self-help-alliance.ca

Wellington:

Address: 147 Wyndham Street North, Suite 207

Guelph ON N1H 4E9

Phone: 519-763-4014

Waterloo Region-Kitchener Site:

Address: 67 King Street East, Kitchener, ON N2G 2K4

Phone: 519-570-4595

Waterloo Region-Cambridge Site

Address: 9 Wellington Street, Unit 1

Cambridge, ON, N1R 3Y4

Phone: 519-623-6024

Central West Network of Specialized Care

The Central West Network of Specialized Care has a Dual Diagnosis Justice Case Manager who provides court support for people with a developmental disability or dual diagnosis (both mental disorder and developmental disability). Their main role is working with health, justice and corrections professionals with the view to keep people with a Dual Diagnosis out of the criminal justice system and/or support them through the justice processes.

Website: www.cwsds.ca

Phone: 519-741-1121 x217

Developmental Services Resource Centre (DSRC)

The Developmental Services Resource Centre is the single access point to services for adults and children with developmental disabilities in Waterloo Region. DSRC offers clinical services; service coordination assistance; court support services; and facilitates referrals to residential services, community participation supports, and respite programs.

Website: www.dscwr.com

Kitchener-Waterloo Site:

Address: 1120 Victoria Street North,

Suite 205 Kitchener, ON N2B 3T2

Phone: 519-741-1121

Cambridge Site:

Address: 5A – 887 Langs Drive, Cambridge, ON, N3H 5K4

Phone: 519-650-9718

Elmira Site:

Address: 18 Barnswallow Street, Elmira ON N3B 2Y9

Phone: 519-669-2070

Lutherwood

Lutherwood offers a wide range of mental health, employment, housing, and family support services. They provide a Youth Court Mental Health Worker to the Youth Justice Court at 85 Frederick Street, Kitchener.

Website: www.lutherwood.ca

Address: Mental Health Services

285 Benjamin Road, Waterloo, ON N2J 3Z4

Phone: 519-884-1470

Front Door

Address: 1770 King Street East, Kitchener, ON N2H 1H5

Walk-in Counselling Service Available.

Website: www.frontdoormentalhealth.ca

Phone: 519-749-2932

519-821-2020 poste 344 (French)

Homewood Health Centre

Homewood Health Centre is a leader in mental health and addiction treatment, providing specialized psychiatric services to all Canadians.

Website: www.homewoodhealth.com

Main Campus:

Address: 150 Delhi Street, Guelph ON N1E 6K9

Phone: 519-824-1010

1-866-839-2594 (Admitting Referrals)

Community Alcohol and Drug Services

Address: 49 Emma Street, Guelph, ON N1E 6X1

Phone: 519-836-5733

Waterloo Regional Homes For Mental Health

Waterloo Regional Homes for Mental Health Inc., is a recovery-oriented, community-integrated agency that focuses on improved quality of life and enhanced independence for people experiencing mental health issues by providing access to affordable housing and flexible, individualized supports.

Website: www.waterlooregionalhomes.com

Address: 618 King Street West, Kitchener, ON N2G 1C8

Phone: 519-742-3191 (General)

519-576-7431 (Crisis Respite)

COMMUNITY RESOURCES – COUNSELLING, OUTREACH, AND SUPPORT

Carizon Family Counselling and Community Services

Carizon provides support and counselling for individuals, couples, and families on a wide range of topics including credit counselling, family violence counselling, stress, divorce, depression and anxiety.

Website: www.carizon.ca

Address: 400 Queen Street South, Kitchener, ON N2G 2W7

Phone: 519-743-6333

Community Care Access Centre – Waterloo Wellington

Providing access to home care, long-term care facilities, and other community health options.

Phone for information and referral – 310-CCAC (2222) (no area code required)

Toll-Free: 1-888-883-3313

Website: www.ccac-ont.ca

Wellington:

Address: 450 Speedvale Avenue West, Suite 201
Guelph, ON

Phone: 519-823-2550

Waterloo Region:

Address: 141 Weber Street South, Waterloo, ON
73 Water Street North, Suite 501, Cambridge, ON,
Phone: 519-748-2222

Community Justice Initiatives

Community Justice Initiatives provides mediation and conflict resolution services, group support for persons impacted by sexual trauma and reintegration support for women.

Website: www.cjiwr.com

Address: 49 Queen Street N., 3rd Floor
Kitchener, ON N2H 2G9

Phone: 519-744-6549

Community Torchlight – Guelph Wellington Dufferin

Distress Line: Callers will connect with a caring, empathic listener. They help support people who are lonely, confused, in distress about their circumstances and need someone to talk to.

Website: www.communitytorchlight.com

Phone: 519-821-3760

Toll-Free: 1-888-821-3760

Family Counselling and Support Services of Guelph Wellington

A non-profit organization offering a wide-range of counselling services, including individual, couple, and family counselling on topics such as parenting, family violence, mental health, and sexuality issues. Case management services are also available for individuals

Website: www.familyserviceguelph.on.ca

Address: 109 Surrey Street East, Guelph ONN1H 3P7

Phone: 519-824-2431

Toll-Free: 1-800-307-7078

Guelph Community Health Centre

The Guelph Community Health Centre is committed to working with our community to provide access to health programs and services and create opportunities for people to improve their well-being.

Website: www.guelphchc.ca

Address: 176 Wyndham Street North, Guelph ON N1H 8N9
20 Shelldale Crescent, Guelph, ON N1H1C8

Phone: 519-821-6638

Guelph Wellington Women in Crisis

Guelph-Wellington Women in Crisis works towards ending violence against women and children in all forms: physical, sexual, emotional and verbal. Women and children are the primary targets of violence inside and outside the family unit.

Marianne's Place – an accessible emergency shelter for women and children

Website: www.gwwomenincrisis.org

Address: 38 Elizabeth Street, Guelph ON N1E 2X2

Phone: 519-836-1110

Crisis Line: 519-836-5710 or

Toll-free: 1-800-265-SAFE (7233)

The Healing of the Seven Generations

A non-profit organization that provides support, including court support, for aboriginal Canadians.

Address: 42 College Street, Upper Unit
Kitchener, ON N2G 2K4

Phone: 519-570-9118

Fax: 519-570-9301

The House of Friendship

A non-profit Christian organization that provides support to low-income children, youths, and adults. Services include addiction treatment programs, community programs, family programs, housing services, including the Charles Street men's hostel.

Website: www.houseoffriendship.org

Address: P.O. Box 1837, Station C, Kitchener, ON N2G 4R3

Phone: 519-742-8327

Fax: 519-742-8868

John Howard Society of Waterloo Wellington

A non-profit organization offering programs to reduce recidivism among people who have been in trouble with the law, and prevent delinquent behavior among youth who may be at risk of offending.

Website: www.waterloo.johnhoward.on.ca

Guelph / Wellington:

Address: 85 Westmount Road, Guelph, ON N1H 5J2
Phone: 519-836-1501

Kitchener-Waterloo:

Address: 310 Charles Street East, Kitchener, ON N2G 2P9
Phone: Kitchener 519-743-6071

Cambridge:

Address: 40 Ainslie Street South, Cambridge, ON N1R 3K1
Phone: 519-622-0815

Kitchener Downtown Community Health Centre

A Health Centre that provides primary health care to its rostered clients.

Website: www.kdchc.org
Address: 44 Francis Street South, Kitchener, ON N2G 2A2
Phone: 519-745-4404

KW Counselling Services

KW Counselling Services offers a wide-range of counselling services, including individual, couple, and family counselling on topics such as parenting, family violence, mental health, and sexuality issues.

Website: www.kwcounselling.com
Address: 480 Charles Street East, Kitchener, ON N2G 4K5
Phone: 519-884-0000

One Roof

One Roof provides for the safety, support, and well-being of homeless and at-risk youth, ages 12-25, in the Region of Waterloo. Programs include skill training, group or individual counselling, family mediation, housing support, outreach, hot meals, advocacy, court support, access to medical care, and an overnight shelter.

Website: www.oneroof.org
Address: 242 Queen Street South, Kitchener, ON N2G 1W3
Phone: 519-742-2788

Stonehenge Therapeutic Community

Stonehenge offers broad range of programs to adult men and women with chronic or acute substance abuse issues.

Website: www.stonehengeetc.com
Address: 60 Westwood Rd, Guelph, ON N1H 7X3
Phone: 519-837-1470

Salvation Army - Mental Health Court Services

Present at the Region of Waterloo's Mental Health Court to provide general emotional and spiritual support to accused persons, family members and friends. Services include: Onsite assistance with clothing as available; one way bus voucher within an hour of Kitchener for accused

living outside of Region, (For example Toronto, London and Hamilton); Referral to other Salvation Army programs, including addiction and mental health services.

Phone: 519-742-8521

St. Mary's Counselling

An organization providing confidential outpatient services for people concerned with alcohol, drugs, or gambling. Services include assessments, referrals to residential and community resources, and support for family members and friends of individuals with alcohol, drugs, or gambling issues.

Website: www.smgh.ca
Kitchener-Waterloo:
Address: 30 Duke Street West, Suite 600
Kitchener, ON N2H 3W5

Cambridge:
Address: 1145 Concession Road, Cambridge, ON N3H 4L
Phone: 519-745-2585 (Kitchener and Cambridge)

Welcome In Drop-In Centre

The Welcome In Drop in Centre is a haven and a caring community for homeless persons, those suffering from mental illness, isolation and economic marginalization. The Drop in Centre provides nutritious meals, shelter, friendship, support and guidance. Doors open at 5 am.

Address: 23 Gordon Street, Guelph ON N1H 4G9
Phone: 519-837-0080

The Working Centre

The Working Centre provides a number of different programs, including: St. John's Kitchen, The Queens Street Commons Café, Barterworks, Job Search Resource Centre, Integrated Supportive Housing, and Street Outreach.

Address: 58 Queen Street South, Kitchener, ON N2G 1V6
Phone: 519-743-1151

St. John's Kitchen:

Website: www.theworkingcentre.org
Address: 97 Victoria Street North, Kitchener, ON N2H 5C1
Phone: 519-745-8928

COMMUNITY RESOURCES - SHELTERS

Women's Crisis Services of Waterloo Region

Anselma House A 20 bed short term, emergency residential shelter for abused women, with or without children.

Haven House A 30 bed short term, emergency residential shelter for abused women and their children.
24 Hour Support Line

Cambridge:
Phone: 519-653-2422
Kitchener-Waterloo:
Phone: 519-742-5894
Toll-Free: 1-800-410-4482

Argus Residence

An emergency residential shelter in Cambridge for youth between the ages of 16-24 who are homeless and in crisis. There is a 10-bed shelter for young men, and a separate 10-bed shelter for young women.

Website: www.argusresidence.com
Phone: Male 519-623-7991
Female 519-650-0452

Bridges - Cambridge Shelter Corporation

A co-ed emergency residential shelter in Cambridge that includes 40 shelter beds, 3 family units, and 20 transitional bachelor apartments. A variety of programs and services are available, including a drop-in centre, addiction counselling, and referrals to residential treatment programs

Address: 26 Simcoe Street, Cambridge, ON N1R 8P2
Phone: 519-624-9305
Website: www.cambridgesheltercorp.ca

Charles Street Men's Hostel

An emergency residential shelter in Kitchener for males 16 years of age and older, run by the House of Friendship

Address: 63 Charles Street East, Kitchener, ON N2G 2P3
Phone: 519-742-8327
Website: www.houseoffriendship.org

Drop In Centre – Guelph

Provides access to 2 emergency shelters in Guelph, access through the Drop-In Centre located at 23 Gordon Street
Phone: 519-837-0080

Elizabeth Place: An Emergency shelter in Guelph for mothers and children or single women.

Stepping Stone: An Emergency shelter in Guelph for single men.

Website: www.ibvm.ca/works/justice/welcome-drop-in

Safe Haven

An emergency residential shelter in Kitchener for youths ages 12 to 15 run by Lutherwood available to both young men and young women.

Phone: 519-749-1450 x240
Website: www.wcswr.org

Wyndham House Youth Emergency Shelter

Youth emergency shelter aged 16-21
Address: 30 Douglas Street, Guelph
Phone: 519-822-2768
Website: www.wyndhamhouse.org

YWCA Mary's Place

An emergency residential shelter for homeless women and their families. The shelter has single occupancy rooms, double occupancy rooms, and family units.

Address: 84 Frederick Street, Kitchener, ON N2H 2L7
Phone: 519-744-0120
Website: www.ywcakw.on.ca

PROVINCIAL MENTAL HEALTH RESOURCES

Centre for Addiction and Mental Health (CAMH)

CAMH is Canada's largest Mental Health & Addictions teaching hospital providing direct patient care for people with mental health and addictions issues as well as one of the world's leading research centres in the area of addictions and mental health.

Emergency Department
Address: 250 College Street, Toronto, ON, M5T 1R8
Phone: 519-836-1110
Website: www.camh.ca

Consent and Capacity Board – Ontario Ministry of Health and Long Term Care

The Consent and Capacity Board conducts hearings under *Ontario's Mental Health Act*, the *Health Care Consent Act*, the *Personal Health Information Protection Act*, the *Substitute Decisions Act*, and the *Mandatory Blood Testing Act*.

Address: 151 Bloor Street West, 10th floor, Toronto ON M5S 2T5
Phone: 1-866-777-7391
Website: www.ccboard.on.ca

ConnexOntario

An up-to-date database providing information about mental health services and supports, as well as drug and alcohol treatment services and support, throughout Ontario. This service is free and confidential. Information is provided by toll-free telephone, email, or web-chat.

Phone: Mental Health 1-866-531-2600
Drug and Alcohol 1-800-565-8603
Problem Gambling 1-888-230-3505

Website: www.connexontario.ca

Human Services and Justice Coordinating Committees (HSJCCs)

The Human Services and Justice Coordinating Committees (HSJCCs) seek to coordinate resources and services for people who are in conflict with the law and who struggle with serious mental illness, developmental disabilities, drug & alcohol addictions, and/or fetal alcohol syndromes

Website: www.hsjcc.on.ca

Mental Health Commission of Canada

A national organization committed to help bring about an integrated mental health system that places people living with mental illness at its centre and changing the attitudes and behaviours to Canadians around mental health issues.

Website: www.mentalhealthcommission.ca

Ontario Disability Support Program (ODSP)

ODSP income support provides financial assistance and other benefits to eligible people with disabilities and their families.

Website: www.mcass.gov.on.ca

Wellington:

Address: 86 Gordon Street, Guelph ON N1H 4H6

Phone: 519-822-7500

Toll Free: 1-800-567-2953

Cambridge:

Address: 73 Water Street N., Suite 605, Cambridge ON N1R 7L6

Phone: 519-623-1230

Toll-Free: 1-888-214-0738

Kitchener-Waterloo:

Address: 715 Fischer-Hallman Road, Unit 301

Kitchener, ON N2C 2N9

Phone: 519-886-4700

Toll-Free: 1-800-441-9820

Psychiatric Patient Advocate Office

An organization that provides independent, confidential advocacy and rights advice to inpatients of the 10 divested provincial psychiatric hospitals, and rights advice to inpatients in Schedule 1 hospitals. Also provides information on patient's rights and advocacy to the public.

Website: www.sse.gov.on.ca

Address: 5700 Yonge Street, 5th Floor

North York, ON, M2M 4K5,

Phone: 1-800-578-2343

Public Guardian and Trustee

A branch of the Ministry of the Attorney General that helps protect the rights and interests of mentally incapable adults who have no one else to act on their behalf in accordance with the Substitute Decisions Act.

Website: www.attorneygeneral.jus.gov.on.ca

Address: 119 King Street West, Suite 9

Hamilton ON L8P 4Y7

Phone: 905-546-8300

Toll-Free: 1-800-891-0502

Schizophrenia Society of Ontario

An organization that provides support, information, and advocacy for people with schizophrenia and their families. One program is the Justice and Mental Health (JAMH) program, which provides support for families whose loved one with schizophrenia is involved in the criminal justice system.

Website: www.schizophrenia.on.ca

Address: 131 John Street South, Hamilton, ON

Phone: 905-523-7413

Toll-Free: 1-800-449-6367

Telehealth Ontario

Free, confidential telephone service that provides health advice or general health information from a registered nurse.

Phone: 1-866-797-0000

APPENDIX A:

GLOSSARY OF TERMS

ACTT – Assertive Community Treatment Team

- An organization that provides support and supervision for those in the community with significant mental health issues. There are four ACT Teams in Waterloo Wellington, one associated with Grand River Hospital, one provided by Waterloo Regional Homes for Mental Health Inc. and two operated by Homewood Health Centre.

Absolute Discharge

- The most lenient sentence for an adult accused. Jane would be found guilty by the Court, but given an absolute discharge. There is a finding of guilt, but no conviction is registered and Jane has no conditions to follow.
- The Ontario Review Board can also give an accused an absolute discharge. If Jane has been found not criminally responsible by reason of mental disorder, unless the presiding Justice or Ontario Review Board finds she is a significant threat to public safety, Jane must be given an absolute discharge and is no longer under the supervision of the Ontario Review Board.

Accused

- If Jane is charged with a criminal offence, but not yet found guilty or acquitted, she is called an accused. Once found guilty, Jane is called an offender.

Adjournment

- Delay of a case for various reasons, including to allow Jane to seek counsel, review the case against her, or to attend for counselling. Adjournments can be sought by either Jane or the Crown, and the Justice of the Peace / Justice will decide whether an adjournment is appropriate.

Appeal

- A formal application to a higher court to review a decision made at a lower court level. For example, a decision in the Mental Health Court, which is in the Ontario Court of Justice, can be appealed to the Superior Court of Justice for summary conviction matters, or the Ontario Court of Appeal for indictable matters.

Appearance Notice

- A form of release, most often used for minor offences, e.g. shoplifting, if Jane is believed not to be a danger to others. It resembles a traffic ticket, and will tell Jane when and where she must appear in court and when and where she must appear to be photographed and have her fingerprints taken for identification purposes.

Arraignment

- The procedure at the start of a Guilty Plea, Preliminary Hearing, or Trial, in which the Justice directs the Court Clerk to read the charges to Jane and Jane must plead either “guilty” or “not guilty”. If Jane refuses to enter a plea, the Justice will direct that a plea of “not guilty” be entered.

Arrest

- The apprehension by the police of an accused suspected of committing a criminal offence. An arrest can be made by a verbal announcement of an arrest and Jane submitting to the arrest or if necessary, by a physical seizure of Jane. An arrest can be made with or without an arrest warrant. Jane must be told the reasons for her arrest without delay.

Assessment

- An assessment conducted by a qualified forensic psychiatrist for a specific purpose. Under the Criminal Code, the two most common psychiatric assessments are to determine whether Jane is unfit to stand trial or not criminally responsible by reason of mental disorder. There are also Ontario’s Mental Health Act assessments to assist a Justice in sentencing Jane.

Audio / Video Appearance (or Remand)

- If Jane is in custody she may often appear from the prison by way of a video-link, or audio-link if the facility she is at does not have video capabilities. This technology is used only for adjournments, and they are called “video remands” or “audio remands”
- If Jane is out of custody but in a psychiatric facility she may appear in the Mental Health Court by an audio-link. This is used only for adjournments, and since Jane is not in custody it is called an “audio appearance”.

Bail

- A form of release permitting Jane to reside in the community until her charge(s) are dealt with. Bail refers to the release of Jane by the court, as opposed to cases in which the police release Jane prior to bringing her to court. If the police choose to bring Jane to court for bail, they must do so within 24 hours of the arrest. Bail can be in the form of an undertaking or a recognizance, or bail can be denied and Jane is then held in custody until the charge(s) are dealt with.

Bail – Consent Release

- The Crown in court has reviewed the file and consented to Jane’s release on bail until her charges are dealt with. The Crown will propose the type of bail (undertaking or recognizance) and the terms Jane is expected to follow, but the final decision lies with the presiding Judicial Officer (a Justice of the Peace or Justice).

Bail Hearing

- When the Crown does not consent to Jane’s release, the Court will hold a hearing and a Judicial Officer will decide whether Jane should be released into the community or detained in custody until her charge(s) are dealt with. A bail hearing is also called a “show cause hearing”.

Bail – Surety

- A person who pledges a monetary amount to the Court that they will supervise Jane if she is released on bail. A surety can be residential, i.e. they live with Jane, or non-residential, i.e. they live elsewhere but still monitor Jane. Generally a surety is a family member or friend who does not have a criminal record, is not a surety for any other accused, has the financial means to meet the amount pledged, is not a victim or witness of the offence, and is confident they can supervise Jane. A surety can revoke his/her pledge at any time, for any reason, by attending at the Courthouse and asking to be removed as surety. If a surety is revoked a warrant for Jane’s arrest is issued.

Bail – Terms

- The terms of Jane’s release back into the community. Standard terms include to come back to court when directed, and to notify the court of any change in address. Other terms depend on the charge(s) and Jane’s criminal record, and can include a curfew, no alcohol or drugs, no weapons, not to have contact with certain people, and not to attend certain places.

Bail – Violation / Breach

- If Jane violates a term of the bail release, e.g. she does not obey a curfew, she can be arrested for a breach of her bail. If that happens Jane will likely go back to bail court. Any financial pledges made to the court, either by Jane or her surety, can be forfeited to the Crown during a later hearing, called an Estreatment Hearing

Bench Warrant

- A warrant for Jane's arrest issued by the presiding Judicial Officer if Jane does not attend for a scheduled Court date. The warrant will be given to the police to locate Jane and execute the warrant.
- A "discretionary bench warrant" is a bench warrant that is issued with a specific date it is not to be executed before. Discretionary bench warrants are often used when Jane has been ordered to appear in court but cannot appear for a valid reason, e.g. she is in Hospital. The discretionary warrant allows the court to maintain jurisdiction over Jane but allows Jane a certain amount of time to attend court prior to the warrant being executed.

CDSA – Controlled Drugs and Substances Act

- The federal statute that regulates drugs and other substances. The Act contains lists of prohibited drugs / substances and offences for producing, possessing, and trafficking in them. CDSA offences are prosecuted by the Federal Department of Public Prosecutions (The Federal Crown).

Charge / Count

- A formal accusation of a specific crime made against Jane. Jane can be charged with numerous charges / counts from one incident, or can be charged with one global charge / count for numerous incidents. The police lay charges / counts, and the Crown decides which charges / counts to proceed on.

Charter

- A short-form used for the Canadian Charter of Rights and Freedoms. Jane is guaranteed certain rights under the Charter to ensure a fair trial.

Community Service

- A type of sentence under which Jane is ordered by the Court to provide volunteer services in the community. For an adult accused like Jane, community service must be ordered as a term of probation, while a youth accused can be ordered to do community service independent of a probation order.

Community Treatment Order

- A Community Treatment Order is an order under Ontario's Mental Health Act which governs a person with a serious mental disorder in the community. The purpose of a community treatment order is to provide Jane with a comprehensive plan of community-based treatment or care and supervision that is less restrictive than being detained in a psychiatric facility.

Concurrent Disorders

- A description used if Jane has both mental health issues and addiction issues.

Concurrent Sentence

- When Jane is sentenced on two or more charges and the sentences run at the same time as each other.

Consecutive Sentence

- When Jane is sentenced on two or more charges and the sentences run one after the other.

Conditional Discharge

- The second-most lenient sentence for an adult accused. Jane is found guilty by the Court, but given a discharge that is conditional upon her following court-prescribed conditions on a probation order for up to three years. It is similar to a suspended sentence with a probation order, except there is no conviction registered.
- The Ontario Review Board can also give Jane a conditional discharge. If Jane has been found unfit to stand trial or not criminally responsible by reason of mental disorder, and is found to be a significant threat to the safety of the public but does not need to be detained in a forensic psychiatric hospital, then she will be given a conditional discharge and can reside in the community subject to terms set by the Board.

Conditional Sentence

- A sentence of custody, but one that can be served in the community. Often called "house arrest", Jane is deemed to be serving a sentence, but is in the community subject to court-imposed terms, usually stricter than probation terms. A conditional sentence must be less than two years. Some charge(s) are not eligible for conditional sentences.

Criminal Code of Canada

- A federal statute that governs the criminal law of Canada. The majority of criminal offences are listed, as well as evidentiary and procedural rules.

Criminal Record

- An official list of Jane's criminal convictions. There are two types: A nation-wide record, maintained by the RCMP, and a local record maintained by a local police force.

Crown / Crown Attorney / Assistant Crown Attorney

- An employee of the Ontario Ministry of the Attorney General who represents the public in the prosecution of offences. There is one Crown Attorney for each Region, and a number of Assistant Crown Attorneys depending upon the population of the Region. All are often referred to as "Crowns".

Crown Brief

- The evidence collected by the police and provided to the Crown in order to prosecute Jane. Depending on the case it can be a few dozen pages or thousands of pages, it could be on paper or on computer, or a combination of both; and could contain items such as witness statements, photographs, videos, and officers' notes.

Custody

- A state of being kept in prison. Jane can be kept in custody prior to her sentence, referred to as "pre-sentence custody", or if found guilty after a plea or trial, be sentenced to custody as part of her punishment.

Defence Counsel

- A lawyer with experience in criminal law hired by Jane to provide legal advice and represent her in criminal court.

Detained

- When Jane is detained she is held in custody by a court order prior to the completion of her case.
- Jane can also be detained by the Ontario Review Board. If Jane has been found unfit to stand trial or not criminally responsible by reason of mental disorder, and the Ontario Review Board has found her to be a significant threat to public safety, the Board can order that she be detained in a forensic psychiatric hospital.

Developmental Disability

- A Developmental Disability is the term used to describe a number of conditions whereby the individual is significantly behind others people in terms of the intellectual, social and life skills in development. Onset is prior to age 18 and the average IQ is below 70.

Disclosure

- A copy of the Crown Brief given to Jane to assist her. Jane has the right to the evidence in the possession of the Crown and police that may be used against her. There are a few exceptions to this right, e.g. Jane is not entitled to evidence that would disclose the identity of a confidential police informant.
- Disclosure is usually given to Jane at her first court appearance, along with a "Crown screening form", which tells Jane what the Crown's position is on issues like diversion and sentence.

Disposition

- A term used by the Ontario Review Board. If Jane is under the supervision of the Ontario Review Board she is subject to a disposition, rather than a sentence. A disposition will have terms on it that Jane must follow.

Diversion

- A program that Jane can participate in instead of the police laying criminal charges (pre-charge diversion), or that can lead to the Crown withdrawing or staying charges that have been laid (post-charge diversion).
- Eligibility for a post-charge diversion program is guided by the Crown Policy Manual. Generally speaking, diversion is offered to persons with a limited or no criminal record, for minor property offences or offences with little to no violence.

DSM-V-TR – Diagnostic and Statistical Manual, 5th edition, text revised

- Reference book used by medical professionals to diagnose mental disorders.

Dual Diagnosis

- Someone that has both a mental illness and is developmentally delayed.

Duty Counsel

- A criminal lawyer hired by Legal Aid Ontario to provide legal advice to unrepresented Accused in first appearance / adjournment court, bail court, or guilty plea court.

Election

- Crown Election: On hybrid offences, the Crown can elect to proceed by summary conviction or by indictment.
- Accused Election: On indictable offences Jane can elect to have a trial in the Ontario Court of Justice; or a preliminary inquiry in the Ontario Court of Justice and then a judge-alone trial in the Superior Court of Justice; or a preliminary inquiry and then a judge-and-jury trial in the Superior Court of Justice.

Estreatment

- The procedure undertaken by the Crown to collect money pledged by Jane and/or her surety or sureties when Jane was on a recognizance of bail, pledged money that she would abide by the terms, and was then convicted of breaching a term of the bail or failed to appear in court.

Exigent Circumstances

- An exception to the general law that the police cannot enter a person's home without their consent or a search warrant. If the police have reasonable grounds to believe that there is an imminent risk to the safety of a person inside the home they can enter without a warrant or consent. An example would be if the person inside is in serious crisis and is a risk to themselves or others.

Federal Crown

- A prosecutor hired by the Federal government to prosecute offences under certain federal laws, including the Controlled Drugs and Substances Act, or the Income Tax Act.

Fine

- A sentence imposed for a criminal offence. A fine can be imposed on its own, or in combination with another sentence, most often with probation.

Flagged

- A term used by the Crown and police to describe when Jane has been identified as a high-risk offender. If Jane has been identified as a high-risk offender she can be “flagged” locally, or nationally.

Forensic Psychiatric Hospital

- One of ten psychiatric programs in the province of Ontario that can assess and/or treat Jane for the issues of fitness to stand trial or criminal responsibility on account of mental disorder.
- Only those Accused who have been found either unfit to stand trial or not criminally responsible on account of mental disorder and are under the supervision of the Ontario Review Board, or are being assessed for either of those two reasons, or are being assessed for a few other specific reasons (infanticide, risk, dangerous offender or long term offender status) can be admitted to a forensic psychiatric hospital.

Forensic Psychiatrist

- A psychiatrist that specializes in the relationship between psychiatry and the law. Forensic psychiatrists can be hired by Jane, the Crown or the court to provide expert psychiatric evidence on various issues, including whether Jane is unfit to stand trial, not criminally responsible (NCR), or a risk to society.

Hybrid Offence

- A criminal offence for which the Crown can choose to proceed by summary conviction or by indictment. Most offences are hybrid offences.

Indictable Offence

- One of the more serious criminal offences, for which the Crown has no choice but to proceed by indictment.
- Information / Indictment
- The actual document alleging the offence(s) Jane is charged with. A police officer swears an information against Jane. If Jane is charged with an indictable offence and chooses to have a trial in the Superior Court of Justice, the information will become an indictment after the preliminary inquiry.

Judicial Officer

- A term used in this booklet to refer to a Justice or the Peace or a Justice. For example, both a Justice and a Justice of the Peace have the jurisdiction to order a Form 2 under Ontario's Mental Health Act. Therefore, the term Judicial Officer is used.

Justice

- Judges who preside in the Ontario Court of Justice and Superior Court of Justice are called “Justices”. They are addressed as “Your Honour”. Justices preside over criminal cases, family law proceedings, and various other matters.

Justice of the Peace

- Justices of the Peace preside in Provincial Offences Court, as well as in criminal bail court and first appearance court / adjournment court. They are addressed as “Your Worship”.

Keep Fit Order

- An order under section 672.29 of the Criminal Code. If Jane is fit to stand trial, but there is a risk she may become unfit to stand trial as a result of her mental disorder, the court can order that she be detained in a forensic psychiatric hospital rather than a regular prison in order to ensure that she remains fit to stand trial.

Keep the Peace

- A term used in probation orders, bail releases, and peace bonds, usually written as “keep the peace and be of good behaviour”, which generally means to follow the laws of the province and country.

Make Fit Order

- An order under section 672.58 of the Criminal Code. If Jane is found unfit to stand trial, but a forensic psychiatrist has given an opinion that she could become fit if treated at a forensic psychiatric hospital, the court can order treatment of Jane. Certain strict conditions must be met, including that the order can only be made once, that it cannot be longer than 60 days, and that it must be the least restrictive and least intrusive possible. This is the only section of the Criminal Code that allows the medication of Jane against her will. A defence counsel must be appointed to represent Jane before such an order can be made, and Jane has the right to argue against the order.

Mental Disorder

- The term used in both the Criminal Code and Ontario's Mental Health Act. Under the Criminal Code a mental disorder is defined as “a disease of the mind”. Under Ontario's Mental Health Act a mental disorder is defined as “any disease or disability of the mind”.
- In this booklet the term mental disorder is used, as well as the more general “mental health issues”.

Mental Health Act

- The Ontario statute that governs psychiatric hospitals, psychiatric admissions, and various other aspects of mental health law in the province.

Mental Health Diversion

- A program for accused with mental health issues who are charged with minor criminal offence(s) and have limited prior criminal involvement. If Jane successfully completes a mental health diversion program her charge(s) will be stayed.

NCR - Not Criminally Responsible

- A defence to a criminal charge under section 16 of the Criminal Code. This defence is available to Jane if her mental disorder was such that it rendered her incapable of appreciating the nature and quality of her offence or of knowing it was wrong.

Oath / Affirmation

- When a witness, victim, or Jane takes the stand to testify they must swear to tell the truth or affirm to tell the truth. To swear an oath is to swear on a bible or other religious book, while to affirm is to make a solemn promise to the Court.

Officer-in-Charge Undertaking (with Promise to Appear)

- A form of release under which Jane is arrested and taken into custody, but later released from the police station upon signing an undertaking with certain conditions.

Pardon

- A legal forgiveness of a criminal conviction. Section 748 of the Criminal Code and the federal Criminal Records Act govern who is eligible for a pardon. If Jane is granted a pardon for an offence it is no longer part of her criminal record. A pardon can be revoked if further crimes are committed.

Parole

- If Jane is sentenced to a penitentiary sentence, a period of time during which she is released into the community prior to the end date of her sentence and is subject to supervision under strict terms.

Peace Bond

- Similar to a restraining order, a peace bond contains terms that Jane must follow. A peace bond is not a criminal sentence, or part of a criminal record, but breaching a peace bond can result in a criminal charge.
- Peace bonds can be either a common law peace bond, in which a Justice uses his or her power under the common law to order Jane into a peace bond; or a peace bond under s.810 of the Criminal Code.

Penitentiary

- A prison run by the Federal government. If Jane is sentenced to 2 years or more in custody she will serve her sentence in a penitentiary.

Plea Resolution

- An agreement between the Crown and Defence Counsel (or Jane if she is self-represented) whereby both sides have agreed that Jane will plead guilty to certain offences and the Crown will withdraw others, and the Crown will seek a specific sentence. Both sides to a plea resolution must be aware that the final decision as to sentence always rests with the presiding Justice.

Plea Inquiry

- Prior to Jane entering a guilty plea the Justice will ask Jane or her counsel certain questions to ensure that Jane is entering the plea voluntarily, that Jane understands she must admit the facts of the case, that she understands the consequences of the plea, and that Jane is aware that no matter what plea resolution has been discussed, the sentence is always up to the Justice.

Preliminary Inquiry

- If Jane is charged with an indictable offence, other than an absolute jurisdiction offence, she has the right to choose to have a preliminary inquiry in the Ontario Court of Justice prior to having her trial in the Superior Court of Justice. During a preliminary inquiry the Crown must prove that it has enough evidence to take the case to trial, and Jane has the right to request to hear from specific Crown witnesses.

Pre-Sentence Report

- A report ordered by a Justice to assist in sentencing Jane. A pre-sentence report is written by a probation officer, and includes Jane's background, family supports, current issues, and some suggestions on sentence.

Judicial Pre-Trial Meeting

- A meeting between the Crown, defence counsel and the Justice during which they discuss the case without prejudice to either party.

Probation

- A sentence imposed for a criminal offence. A probation order can be for any length of time up to three years. It is most often imposed with a suspended sentence, but can also be imposed in conjunction with other sentences such as a conditional discharge, fine, or after a term of imprisonment. A probation order will have terms that Jane must follow. The terms relate to the offence and the causes of it. Common terms include reporting to a probation officer, to take counselling as directed, not to have contact with certain people, not to consume alcohol or drugs, or not to possess weapons. The order can include a term to continue under the care of a family doctor and/or psychiatrist and to take medication as prescribed, but only if Jane consents to such a term being added to the probation order.

Recognizance

- A form of bail release in which Jane pledges an amount of money to the court that she will follow the terms of her bail. A recognizance can also include a surety who also pledges money that he/she will supervise Jane. If Jane resides more than 200km away from the jurisdiction in which she is charged a recognizance can include a certain amount of money being deposited in advance of Jane being released.

Reformatory

- A prison run by the Provincial government. If Jane is held in custody while awaiting trial / plea / sentence, she is held in a reformatory. In addition, if Jane is sentenced to custody for anything less than two years she will serve her sentence in a reformatory.

Search Incident to Arrest

- If Jane is arrested the police have the right to conduct a preliminary search of her person and her immediate surroundings for evidence or anything that might be dangerous to Jane or to them, such as weapons.

Sentence

- The punishment imposed if Jane is found guilty of an offence.

Stay of Proceedings

- An application by the Crown to suspend the charge(s) against Jane. A stay is similar to a withdrawal of the charge(s), except that the Crown can recommence the proceedings against Jane within 1 year on an indictable offence and 6 months on a summary conviction offence. The Crown must have a valid reason for recommencing proceedings, e.g. Jane failed to complete a diversion program.

Subpoena

- A legal document ordering a witness to attend Court and give testimony. A subpoena may request that the witness provide oral testimony, e.g. an eye witness; or that they bring documents or records to Court with them, e.g. medical records

Summary Conviction Offence

- One of the less serious criminal offences, for which the Crown has no choice but to proceed by summary conviction. Most summary conviction offences carry a maximum sentence of imprisonment of 6 months.

Summons

- A legal document commanding Jane to appear in court at a specific time and location to face charge(s). A summons may also include a time and location for Jane to attend for fingerprinting.

Undertaking

- A form of bail release in which Jane promises the court to abide by certain conditions. No money is pledged, and no sureties are required.
- An undertaking can also be a promise by a lawyer to the court or another lawyer to do a certain task. An undertaking by a lawyer is a formal promise and the task must be completed.

Unfit to Stand Trial

- Jane is unfit to stand trial if she is unable to conduct a defence during the course of her criminal trial as a result of her mental disorder. In particular, if Jane is unable to understand the nature of the proceedings, or the possible consequences of the proceedings, or is unable to communicate with counsel, she will be found unfit to stand trial.

Verdict

- The decision of the Court as to whether Jane is guilty or not guilty of the charge(s).

Victim

- The victim of a criminal offence. A victim can be the direct victim of the crime, e.g. a person who was assaulted; or an indirect victim, e.g. a family member of someone who was killed as a result of a crime.

Victim Fine Surcharge

- A monetary amount added to Jane's sentence. Money collected goes towards various programs to assist victims of crime. The surcharge is automatically added to Jane's sentence unless the Justice specifically refuses to order it.

Victim Impact Statement

- A statement prepared by a victim outlining the impact of the crime, and provided to the court at Jane's sentencing. It can be in written form, or provided orally. The victim can outline the emotional impact, financial impact, and/or physical impact of the crime, but cannot include their opinion as to the appropriate sentence.

Withdrawal of Charges

- The Crown can end the case against Jane by withdrawing the charges. The Crown can withdraw the charges at any time up until a plea is entered. After a plea is entered the Crown must have the court's approval to withdraw charges.

Witness

- A person who can provide evidence in a criminal case. Witnesses can be called by the Crown or defence, or even by the court in rare cases. Most witnesses are eye witnesses, who saw or heard something that directly relates to the case. There are also business witnesses, like a bank manager who brings someone's bank records to Court, and there are also expert witnesses, e.g. a psychiatrist, who can provide an opinion on specific issues.

YCJA – Youth Criminal Justice Act

- The statute that governs accused persons charged with offence(s) that occurred while they were between the ages of 12-17. This includes accused who are currently age 12 to 17, or accused who are now adults but the offences were committed while they were between the ages of 12-17. Offences under the YCJA are the same as offences under the Criminal Code, but sentencing under the YCJA has different principles.

Youth / Young Person

- An accused charged under the YCJA.

APPENDIX B:

GLOSSARY OF MENTAL HEALTH FORMS

The most common mental health forms that Jane would encounter within the justice system are:

Form 1

An order made under section 15 of *Ontario's Mental Health Act*. Under section 15 a physician can commit Jane to a psychiatric hospital for observation for up to 72 hours. There are specific criteria that must be met, as the order can force Jane to attend at and remain at the hospital against her will.

Form 2

An order made under section 16 of *Ontario's Mental Health Act*. Under section 16 a Judicial Officer can order Jane to go to the closest psychiatric hospital for an examination, at which point the physician who examines her may choose to issue a Form 1. The Judicial Officer must hear evidence under oath that satisfies certain criteria, as the order allows the police to apprehend Jane and bring her to the Hospital, without her consent, if necessary.

Form 3 / 4

Forms under *Ontario's Mental Health Act* permitting Jane's continued involuntary detention in a psychiatric hospital. If the treating psychiatrist feels that Jane meets the criteria for involuntary detention after the Form 1 expires after 72 hours, then a Form 3 is issued. A Form 4 is issued if the Form 3 expires and Jane still needs to be detained. Jane has various rights of appeal against these forms as outlined in *Ontario's Mental Health Act*.

Form 6 / 8

Forms under sections 21 and 22 of *Ontario's Mental Health Act* which allow a Justice to order a psychiatric examination of Jane.

Form 9

If Jane is an involuntary patient and flees from a psychiatric hospital the hospital will call the Police and a Form 9 under *Ontario's Mental Health Act* will be issued directing the police to search for and apprehend Jane. A Form 9 remains in effect for up to 30 days.

Form 48

A form under section 672.11 of the *Criminal Code* ordering a forensic psychiatric assessment in order to determine fitness to stand trial or criminal responsibility.

However, depending on what other services or supports Jane might need other mental health forms might be used.

FORMS USED IN ONTARIO'S MENTAL HEALTH ACT

| FORM | FORM NAME | SECTION OF MHA | WHO SIGNS |
|------|---|---|---|
| 1 | Application by Physician for Psychiatric Assessment | 15 | Physician who examined person at emergency room |
| 2 | Order for Examination | 16 | Justice of the Peace |
| 3 | Certificate of Involuntary Admission | 20 (1) (C) | Attending Physician (in psychiatric facility) |
| 4 | Certificate of Renewal | 19 | Attending Physician |
| 5 | Change from Involuntary to Voluntary Status | 20 (4) | Attending Physician (must specify reasons for change) |
| 6 | Order for Attendance for Examination | 21 (1) | Judge |
| 7 | Confirmation by Attending Physician of Continued Involuntary Status | 48 (12) | Attending Physician |
| 8 | Order for Admission | 22 (1) | Judge |
| 9 | Order for Return | 28 (1) | Staff person in charge of psychiatric facility |
| 10 | Memorandum of Transfer | 29 (1) | Staff person in charge of psychiatric facility |
| 11 | Transfer to a Public Hospital | 30 (1) | Staff person in charge of psychiatric facility |
| 12 | Warrant for Transfer from Ontario to another Jurisdiction | 31 | Minister of Health and Long Term Care |
| 13 | Order to Admit a person coming into Ontario | 32 | Minister of Health and Long Term Care |
| * 14 | Consent to Disclosure, Transmittal or Examination of Clinical Record | Replaced by forms generated by specific facility. | Patient or person authorized to consent |
| 15 | Statement by Attending Physician | 35 (6) | Attending Physician |
| 16 | Application to Consent and Capacity Board to Review a Patient's Involuntary Status | 39 (1) | Involuntary Patient, or anyone on their behalf; staff in charge of facility, Minister of Deputy Minister of Health & Long Term Care |
| 17 | Notice to Consent & Capacity Board of the Need to Schedule a Mandatory Review of Patient's Involuntary Status | 39 (4) | Staff person in charge of psychiatric facility |
| 18 | Application to the Board to Review a Finding of Incapacity to Manage Property | 60 | Patient or outpatient |
| 21 | Certificate of Incapacity to Manage One's Property | 54 (4) | Physician who performs examination |

FORMS USED IN ONTARIO'S MENTAL HEALTH ACT

| FORM | FORM NAME | SECTION OF MHA | WHO SIGNS |
|------|--|-------------------|--|
| 22 | Financial Statement | 55 | Staff person in charge of psychiatric facility |
| 23 | Notice of Cancellation of Certificate of Incapacity to Manage One's Property | 56 | Attending Physician |
| 24 | Notice of Continuance of Certificate of Incapacity to Manage One's Property | 57 (2) | Physician who performs examination |
| 25 | Application to Consent and Capacity Board to Review Status of an Informal Patient between 12 and 15 years of age | 13 (1) | Young person between 12 and 15 years inclusive |
| 26 | Notice to the Board of Need to Schedule a Mandatory Review of the Status of an Informal Patient between the ages of 12 to 15 | 13 (2) | Staff person in charge of psychiatric facility |
| 27 | Notice by Officer in Charge to an Informal Patient 12 -15 Years old | 38 (6) | Staff person in charge of psychiatric facility |
| 28 | Request to Examine or to Copy Clinical Record | 36 (2) 36 (16) | Patient or person authorized to consent |
| 29 | Application to the Board to Withhold all or part of the Clinical Record | 36 (4) | Staff person in charge |
| 30 | Notice to Patient | 38 (1) | Attending Physician |
| 31 | Application to the Board to Review a Patient's Competency to Examine/ Disclose his or her Clinical Record | 36 (14) | Patient |
| 36 | Notice of the Right to Appoint a Representative | 36.1 (4) | Attending Physician |
| 40 | Notice to Patient of Right to Apply for a Representative | 36.2 (2) | Attending Physician |
| 41 | Application to Consent and Capacity Board to Appoint a Representative | 36.2 (1) | Patient |
| 42 | Notice to Person of Application for Psychiatric Assessment | 38.1 | Attending Physician |
| 44 | Appointment of a Representative | 36.1 | Person appointing representative |
| 45 | Community Treatment Order | 33.1 | Physician qualified to issue a CTO |
| 46 | Notice to Person of Issuance /Renewal of CTO | 33.1 (10) | Physician |
| 47 | Order for Examination | 33.3 (1) 33.4 (4) | Person subject to CTO or representative; physician |
| 49 | Notice of Intention to Issue or Renew a CTO | 33.1(4) 33.1 (8) | Physician who intends to issue or renew CTO |
| 50 | Confirmation of Rights Advice | 14.3 (5) 16 (2) | Rights Advisor |

CAPACITY FOR DECISION MAKING

Depending on Jane's capacity for Decision Making, other forms may be used. Below is a listing of the forms pertaining to an individual's capacity for Decision Making.

| Health Care Consent Act (Forms Pertaining to Capacity for Decision Making) | | |
|--|--|-------------------------|
| Form A | Application to the Board to Review a Finding of Incapacity | s. 32 of the HCCA |
| Form B and C | Application to the Board to Appoint a Representative | s.33(1)(2) of the HCCA |
| Form D | Application to the Board for Directions | s.35 of the HCCA |
| Form E | Application to the Board for Permission to Depart from Wishes | ss.36 of the HCCA |
| Form F | Application to the Board with Respect to Place of Treatment | s.34 of the HCCA |
| Form G | Application to the Board to Determine Compliance with s. 21 | s.37 of the HCCA |
| Form H | Application to the Board to Amend the Conditions of or Terminate the Appointment of a Representative | ss.33(7)(8) of the HCCA |

This diagram represents a simplified map of the pathways between the criminal justice system and the mental health system for individuals aged 18 or older. Each person's case is very different, and some journeys through the system will not be reflected here. This system map is meant only as a general overview.

1 POLICE CONTACT When the police are called or they come into contact with an individual experiencing a mental health crisis, their decision to warn, arrest, or charge the individual is based on the seriousness of the offence as well as on public safety. Police may also refer the individual to a pre-charge diversion program in the community.

2 ARREST/CHARGE BY POLICE Police will decide whether to charge or arrest an individual based on the seriousness of the crime(s), public safety concerns and the Criminal Code. * If public safety concerns can be addressed at the scene, the individual may be released and given a date for their first court appearance. Otherwise, the individual is taken into custody and either released at the police station or detained until their bail hearing.

4 COURT APPEARANCE At the first court appearance the individual will be given disclosure (their copy of the Crown's case) and their Crown screening form, which outlines the Crown's position on sentencing. If the Crown is aware of the individual's mental health issues, the screening form will invite the individual to consider Mental Health Court. The individual may also request to be considered for Mental Health Court. Mental Health Courts are specialized courts that link individuals to community-based treatment, counselling and services.

5 TRIAL The individual, like all accused persons, is innocent until proven guilty. Every trial is unique, and can unfold in many ways. The individual may be found not guilty and released unconditionally with any previous bail terms coming to an end. If the individual is found guilty or pleads guilty, the individual will be sentenced and any bail terms will remain in place until the sentencing.

6 SENTENCING Where an individual is sentenced for an offence, there are several possible sentencing options available to the court including being released on probation (i.e. Conditional discharge), paying a fine, or remaining in custody. For adults sentenced to less than two years, the sentence is served in the provincial correctional system. If the sentence is two years or more, it is served in the federal correctional system.

6 REINTEGRATION After completing the sentence, the individual begins the process of reintegrating into the community to obtain employment or attend programs suitable for addressing their needs. Reintegration planning often begins while the person is serving the sentence.

7 PROBATION PAROLE Community supervision is required for Individuals who have served a period of time in custody. A probation/parole officer will work with the individual, and if appropriate with their family, to develop a plan, help meet the individual's goals, reduce the chance of re-offending, monitor compliance of court ordered conditions, and may return the individual to court for any non-compliance.

A SUPPORTS Support from family, the community, and having access to the social determinants of health, are key to preventing individuals from becoming involved with the criminal

B EMERGENCY DEPARTMENT DIVERSION TREATMENT & CRISIS SERVICES Depending on the severity of the offence, an officer can refer an individual to a pre-charge diversion program instead of laying a charge. In many communities, police services also have agreements with their local mobile crisis intervention teams and specially-trained crisis intervention team officers can be called upon to support individuals experiencing a mental health crisis. Under Ontario's Mental Health Act, **Section 17, the police have the power to detain a person who is deemed to be a risk to themselves or others and accompany the individual to the local hospital emergency department for a psychiatric assessment. Crisis bed programs in the community may also be available to support individuals in crisis.

C POST-CHARGE At any time after charges have been laid, Crown attorneys have the option not to prosecute and to divert the person into mental health treatment and support instead. This is referred to as post-charge diversion (or pre-trial diversion or court diversion). If the accused person is eligible for diversion, a mental health court support worker will work with the person to develop a program that may include community support, supervision and/or treatment.

D FITNESS ASSESSMENT At any time in the court process, either side can raise the issue of "fitness to stand trial." A person is unfit to stand trial if they have a mental illness that prevents them from understanding the nature or object of what happens in court, understanding the possible consequences of what happens in court, or communicating with and instructing their lawyer. The court will typically require a psychiatric or fitness assessment. If the person is found unfit, the judge may order them to receive treatment for up to 60 days in order to return them to a "fit" state. This is called a "make fit" order (or treatment order). If the person is fit after treatment, they are returned to court. If the person is found unfit to stand trial and remains unfit even after treatment, a formal finding of unfit to stand trial is made and the case is transferred to the Ontario Review Board (ORB).

E UNFIT or NOT CRIMINALLY RESPONSIBLE The accused person is transferred to the ORB if they are found to be not criminally responsible (NCR), which means that at the time of the act, they were incapable of knowing what they were doing and that it was wrong.

F DISPOSITION The ORB reviews each case annually and makes a decision, called a disposition, about whether to release the accused person with or without conditions or detain them in a psychiatric hospital based on whether they believe the person is a risk to themselves, others or the community.

G DISCHARGE PLANNING When an individual with a mental illness is released from hospital or a correctional institution, a discharge plan may be created. Community mental health service providers will work with the person to help them follow the plan and reintegrate back into the community.

H SUPPORTS Support from family, the community, and having access to the social determinants of health, are essential to supporting the reintegration of the individual back into the community and preventing recidivism.

*In Canada, the Criminal Code of Canada, Part XX.1: Mental Disorder, Section 672 outlines the criminal justice process for accused individual with mental health issues.

**In Ontario, the Mental Health Act outlines the criteria for voluntary, informal and involuntary admissions to designated psychiatric facilities, as well as for the management of psychiatric out-patient under Community Treatment Orders.

Sources Criminal Code, RSC 1985, c C-46, <<http://canlii.ca/t/524k2>> retrieved on 2013-11-15 Mental Health Act, RSO 1990, c M 7

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