

Diversion: A Guide for Families

If your loved one has been in contact with the police, you are probably concerned about them going through the trial process or being convicted of a crime. This is especially true if your family member has a mental illness, which may have played a part in the incident. Luckily, our justice system has mechanisms in place to prevent people from becoming "criminalized." Police diversion, court diversion, and mental health courts give people with mental illness an alternative to criminal prosecution.

Police Diversion

Also called *pre-arrest diversion*, police diversion is basically the officer's choice to not lay a charge. If the police suspect that your family member has a mental illness and the offence is only minor, they have options other than to arrest. These include:

- Taking the person to a psychiatric facility for assessment under the *Mental Health Act*;
- Referring the person to community mental health services; or
- Simply issuing a warning.

Court Diversion

Also called *pre-trial diversion*, court diversion is the Crown's decision to not prosecute a person with a mental illness for an offence. The purpose of court diversion is to redirect individuals from the criminal justice system to mental health services and supports, while considering the safety of the individual and the public. Mental health workers help the Crown identify whether a person is suitable for diversion, based on their mental health history and past criminal record. A person who goes through court diversion will not receive a criminal record for that charge.

The court diversion process has three core stages:

1. **Assessment:** Your family member will receive a mental health assessment at the beginning of and throughout the process. The assessment is often done informally by a mental health court support worker. It looks at your family member's mental health status, their current living situation, and their linkages to community support and mental health services.
2. **Planning:** A diversion program will be developed based on your family member's needs. This can include psychiatric assessment and treatment, securing resources to meet basic needs (food, shelter, etc.), and finding community supports. **Note: Medical treatment is not necessarily part of every diversion plan.** The services that are part of this plan should be available to your family member even after the diversion program is completed. After he or she consents to the plan, it will be presented for approval by the Crown.
3. **Case management:** A case manager will work with your family member to coordinate the treatment/support plan. If your family member does not already have a case manager, the court support worker will find one.

Which offences are eligible for diversion?

For the purposes of diversion decisions, offences are grouped into three categories:

- **Class I:** These minor offences are eligible for diversion. They include:
 - Theft, possession, mischief, or fraud under \$5000
 - Joyriding
 - Mischief under \$5000
 - Causing a disturbance

- **Class II:** With these offences, the Crown can decide whether the charge is eligible for diversion or not. The decision will be based on your family member's situation, the circumstances of the offence, and the needs of the community (including the victim). Class II offences include:
 - Minor assaults (without injuries or weapons)
 - Property offences under \$5000
- **Class III:** These charges are *never* eligible for diversion. They include:
 - Murder, manslaughter, criminal negligence causing death
 - Dangerous driving causing death or bodily harm or impaired driving
 - Any offence causing serious bodily harm
 - Offences involving firearms
 - Spouse/partner offences

What else will the Crown consider in making a decision about diversion?

Several criteria must be met in order for a person to be considered for diversion:

- There is a reasonable chance of conviction if the case were to go to trial.
- The person suffers from a mental illness that is treatable.
- A designated mental health facility or agency has accepted the person for treatment.
- The person is voluntarily participating and consents to the mental health agency and the Crown sharing information.
- Public safety will not be compromised.

In addition, the Crown may consider:

- the relative seriousness of the offence, including the impact on the victim;
- the person's criminal record, if any (previous offences or diversions do not necessarily disqualify an individual from diversion);
- current and past mental health status;
- the likelihood that the person will comply with the treatment/support plan; and
- information from family members.

What will my family member have to agree to as part of his/her diversion program?

As part of diversion, your family member will have to agree to a treatment/support program. This may include:

- **Medical treatment:** Admission to a hospital, participation in a community mental health program, or some other form of psychiatric care. Community Treatment Orders (CTOs) may also be part of the plan.
- **Community support:** A plan for adequate housing as well as any other necessary community-based supports.
- **Restitution:** An apology to the victim, community service work, or financial compensation to the victim.

How long will the diversion program last?

Diversion programs have no fixed length. Your family member will be expected to stay on the plan until they are stabilized in the community. However, some Crowns will recommend a minimum length for the program.

What will happen if my family member doesn't follow his/her treatment plan?

Once the Crown has approved the diversion program, the person's charges can be "stayed." This means that prosecution is over, but it may be re-activated in exceptional circumstances within one year. If your family member withdraws from the program or fails to comply with his or her plan, the Crown can bring them back to court for prosecution. Typically, the Crown won't stay charges until the person has been stabilized in the community.

What can I do to get my family member into a diversion program?

Any court can do diversion, but not all will be quick to offer it as an option. The Crown attorney may recognize a person as a candidate for diversion, but it is often the defence lawyer who makes this recommendation. Any information you have about your family member's mental illness and their past history with other treatment or diversion programs should be shared with the Crown. Try asking either the Crown attorney or the defence lawyer if court diversion is an option for your family member.

Mental Health Court

Mental Health Courts are courts dedicated to handling criminal charges against people with mental illness. The Toronto Mental Health Court is the only such court that operates 5 full days a week. However, some other regular courts in Ontario dedicate a certain block of time (one day or a half-day per week) to cases involving people with mental illness. Court diversion is one option that is offered to some individuals seen in mental health court, but these courts are about more than just diversion. Mental health courts offer a unique justice process for people with mental illness. They:

- Focus on rehabilitating rather than punishing the person with the mental illness;
- Attempt to reduce or eliminate jail time;
- Include a collaborative effort between the mental health and legal systems to stabilize the person in the community; and
- Use an approach that is less adversarial and more collaborative than regular courts.

Most mental health courts also aim to reduce the amount of time spent in determining whether a person is fit to stand trial. For example, the Toronto Mental Health Court has staff who conduct quick fitness assessments and order treatment for those found unfit to stand trial. This reduces the amount of time the person would have spent in hospital or jail waiting for these issues to be resolved.

Mental health courts can also conduct quick bail hearings that pay special attention to the person's mental health needs. However, because bail hearings must occur within a short period of time, your family member may need to have their bail hearing in a regular court (if they cannot be seen at the mental health court in time).

Mental health courts do try some minor cases. However, extensive trials (where the offence is very serious or the case is very complex) are not conducted in a mental health court; rather, they are referred back to a regular court. Most individuals who go through mental health court are either diverted or intend to plead guilty and would like to go through a simpler justice process where their mental health needs are accommodated.

If there is a mental health court in your area and your family member is eligible to participate, they would be referred to that court fairly early in the prosecution process.