

The Justice Process

a Guide for Families

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
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If your family member has a mental illness and has come in contact with the law, you might find yourself supporting them as they move through the justice system. This guide explains how the justice system works, from the time of the offence to sentencing, so that you will know what to expect at each stage. Although we have done our best to describe the different pathways that you might encounter, it is important to remember that each case is very different. Your family member's case may be unique, which means that details about their process might not be included here. This guide is meant only as an overview, and is not a substitution for professional advice from a lawyer or a support worker.

This guide also includes helpful tips for family members on things you can do and the role you can play at different stages of the process. These are highlighted by a  . In addition to the specific tips outlined in this guide, we suggest that you keep a record of your family member's experience with their illness. This includes health professionals they have seen, medications they have been on, crisis episodes, and details of any contact they have had with the law. Having a record of your family member's experiences is helpful when you communicate with the professionals involved or advocate on your family member's behalf.

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TERMINOLOGY

Many different terms are used to refer to a person who is in contact with the law, depending on where they are in the process. Before being officially charged, the person is called a "suspect." Once they are charged with the offence, they are called "the accused." If found guilty, they are called the "offender." To make this document easier to read, we have named the person who is in contact with the law "Joe." When reading through this guide, imagine that Joe is your family member or a friend you are supporting.

In your journey through the justice system, you will come across many new terms. Some of these apply to all cases, and some are specific to cases involving a person with a mental illness. These terms are highlighted in italics and are defined at the end of this guide. Before you read this guide, here are a few terms you may want to become familiar with:

- *Judge / Justice*

This person presides over the Ontario Court of Justice, Superior Court of Justice, Court of Appeal, or Mental Health Court.

- *Justice of the Peace*

This person usually presides in Bail Court. They also have the power to issue a Form 2: Order for Examination.

- *Crown/Crown attorney / Assistant Crown Attorney*

This person is a government lawyer who conducts criminal cases. His or her role is to seek justice for the public. The Crown's job is to bring all the evidence before the court to prove guilt beyond a reasonable doubt. The Crown's duty is not to see that the accused is convicted, but that justice is done.

- *Defence lawyer*

This is the lawyer who represents the person charged. His or her job is to ensure that the rights of the accused are protected throughout the justice process and that the accused receives a fair trial.

- *Duty Counsel*

This person is a defence lawyer who is paid by the government and can assist in Bail Courts, Remand Courts, and Plea Courts. He or she is usually present in most courthouses in the province.

- *Not Criminally Responsible (NCR)*

A person is not criminally responsible, or NCR, when the court finds that he or she, because of mental illness, could not appreciate the nature or consequences of their actions, or did not know that the actions were wrong at the time of the act.

- **Unfit to Stand Trial (UST)**

A person is found unfit to stand trial when, because of a mental illness, he or she cannot understand what is happening in court, or is unable to communicate with their lawyer

- **Ontario Review Board (ORB)**

This is an independent panel that handles cases of people who are NCR or Unfit to Stand Trial. The panel is made up of five people: a lawyer, a psychiatrist, another mental health professional, a community member, and a chairperson who is usually either a senior lawyer or a retired judge. The ORB makes decisions about where the person will be held, what level of security they require, and when they can be released.

COMING INTO CONTACT WITH THE LAW

A person with a mental illness can come into contact with the law in many ways. It can happen in a public place if someone thinks your family member is doing something wrong. First contact with the police can also occur in the family home if police are called to respond to a crisis.

If you are on the scene when the police arrive, and you know Joe has a mental illness, try to inform the police before they interact with him. Let the officers know helpful ways to talk to Joe so that he doesn't get too scared and react negatively. It is also helpful for you to note the names and badge numbers of the officers involved, so you can follow up with them if you have questions. Write down the details of what happened during the police intervention in case you are asked about it later.

TIP

The police officers at the scene of the incident can use their own judgment when deciding what to do with Joe. If they suspect that Joe has a mental illness, they may decide to do something other than lay charges. This is sometimes referred to as *pre-arrest diversion*. The officer's most common options, in increasing order of seriousness, are:

- **Issue a warning**

If the offence is minor, it is a first offence, and Joe is not expected to be of potential harm to the public, the officer might release Joe with just a warning.

- **Call in a Crisis Team**

Some police services have agreements with their local mental health crisis teams that allow the crisis team to be called in to assist.

- **Divert to psychiatric care**

Under the *Mental Health Act*, the police have the power to take a person with a suspected mental illness who is deemed to be a risk to themselves or others to be seen by a doctor. In some cases, the doctor at the hospital will issue a *Form 1: Application for Psychiatric Assessment*. The Form 1 will allow the doctor to hold Joe in hospital for up to 72 hours to complete a more extensive psychiatric assessment. If Joe is not deemed to be a threat to himself or others, the doctor may choose to not keep him in hospital.

• Arrest

In the case of a serious offence, or a less serious offence where the officer has concerns about public safety, the police may take Joe into their *custody* to charge him with a criminal offence. If the police are not concerned about public safety, they can still charge Joe but issue a *summons* or an *appearance notice* instead. The notices will inform Joe that he must appear in court for the charge at a later time .

Any contact with the police, including apprehensions under the Mental Health Act, may show up on the individual's police record. A police record is different than a criminal record:

• Criminal Record

This record includes any criminal convictions a person has received. This record includes only those charges for which the person was found guilty.

• Police Record

This record includes much more than a criminal record, and extends to any contact a person has had with the police. This includes any charges that were laid - even if the charges were dropped or the person was found not guilty or NCR. Although each police service can put different information on its records, many will include information about a person's mental health. For example, if a person was transported to the hospital during a mental health crisis or if they attempted suicide, this may show up on their police record.

Some jobs and volunteer positions will ask to conduct a police record check if the person will be working with "vulnerable persons" (e.g., children, seniors, or people with disabilities). The employer must get consent from the individual before requesting this record.

IF THERE IS AN ARREST

In Ontario, it is the police, not citizens, who lay a charge. This means that if you call the police to your home during a crisis involving your family member, you do not have a choice as to whether or not they should be arrested or charged. The decision to charge is based on the seriousness of the offence as well as on public interest.

Although the police have guidelines to follow, some flexibility does exist. Let the police officer know what you think about the situation and whether or not you think a charge should be laid.

TIP

If Joe is arrested, he must be told why and he must be notified of his right to contact a lawyer. If Joe asks to speak to a lawyer, a phone must be made available to him as soon as possible and questioning should not continue until he has had the chance to get legal advice.

If you have information about Joe's illness, including his medications and dosages or doctors he is seeing, ask the police to record this information in their notes. It is also helpful to provide contact information for any of Joe's supports. If the police are taking Joe into custody, ask if there is anyone who can ensure that he takes his medications.

TIP

Court Diversion

After charges have been laid, Crown attorneys have the option not to prosecute and to divert Joe into mental health treatment and support instead. This is referred to as pre-trial diversion or court diversion. For the purposes of diversion away from the criminal justice system, offences are grouped into three categories or levels:

• Class I

These are the most minor offences, including shoplifting, causing a disturbance, and possession of a small amount of illegal substances.

- **Class II**

This includes acts such as uttering threats, public mischief, simple assault, and breaking and entering.

- **Class III**

These are the most severe offences, including assault causing bodily harm, sexual assault, manslaughter, and murder.

If the offence is minor and there is no risk to public safety, the Crown may decide that it is in the public's interest to simply withdraw Joe's charge. Some of the criteria for court diversion are:

- *Joe suffers from a mental disorder that is treatable ;*
- *There is a reasonable prospect of conviction if the case were to go to trial ;*
- *The offence is eligible for diversion - only Class I and some Class II offences are eligible ;*
- *A designated mental health facility and/or community support agency has been found that can accept Joe ; and*
- *Joe has consented to participating in the diversion program (rather than going through trial).*

Diversion can take place at any stage of the proceedings, but it is most conveniently done before the trial begins. The Crown can suggest diversion, but in most cases it is the defence counsel that proposes court diversion and shows why the accused is suitable. If Joe's case is eligible for diversion, a mental health court support worker will work with him to develop a program that may include community support, supervision, and/or treatment. **Treatment (i.e., medication) is not necessarily part of every diversion plan.**

Once Joe consents to the plan, his charges will be *stayed* or dropped. If the charge is stayed, it can be re-instated within the following year in exceptional circumstances if Joe fails to follow his diversion program.

In some jurisdictions, a specialized *mental health court* may be available. These courts handle all cases involving a person with a mental illness together, or in one docket. This

allows for a speedier court process, and hopefully, less time spent in jail. The court process at mental health court is typically more collaborative and less adversarial than in a regular prosecution. If the criteria are met, Joe will be directed to a diversion program as an alternative to trial.

Options for Release

Once in custody, the officer can choose to release Joe until his first court appearance. If Joe is not released from the police station, the police must bring him before a Bail Court within 24 hours of his arrest. At Bail Court, if the Crown opposes release, Joe will have to remain in custody until his *bail hearing*, which usually happens within 24 to 72 hours. It is a fundamental right of all Canadians not to be denied reasonable bail without just cause.

BAIL HEARING

At the bail hearing, it is usually up to the Crown attorney to prove why there should be conditions put on Joe's release, or why he shouldn't be released at all. The Justice will choose to deny bail and keep Joe in custody if he or she believes that (1) Joe is a danger to a victim, witness, or the general public, and/or (2) Joe might fail to appear back in court.

If Joe is released, he might have to follow certain conditions such as:

- *Staying away from certain people or places ;*
- *Limiting his travel ;*
- *Reporting to the police, probation office, or bail supervisor ;*
- *Not possessing a weapon ; and/or*
- *Living at a certain place.*

If bail is granted, the judge may issue a Bail Order as a precaution to make sure that Joe returns to court. Types of Bail Orders include:

- ***An undertaking***

A solemn promise, signed by Joe, that he will attend court.

- ***A recognizance on his own***

A guarantee signed by Joe that he will return to court on the set date, or he will pay a sum of money. It may be required that Joe deposit this sum of money into an account for safekeeping.

- ***A recognizance with a surety***

Someone (usually a family member or friend) who knows Joe agrees to make sure that he attends court as required and follows his conditions. A person who is considered a victim in the charge cannot act as a surety.

The defence counsel may ask whether you are willing to supervise Joe and/or act as surety. This will require you to sign a recognizance, which is a promise to pay a sum of money to the Crown if Joe fails to show up for court. Consider your options carefully: You are not required to act as a surety. If at any point you lose confidence that Joe will fulfill his conditions, you can ask to be relieved of this obligation.

TIP

EARLY STAGES OF TRIAL

At this point, the process becomes different, depending on what type of offence Joe is charged with. A *summary conviction* offence is generally less serious than an *indictable* offence. There is also a category of *hybrid* offences in which the Crown decides whether to prosecute the case as a summary offence or an indictable offence. These categories of offences do not relate to the Class I, II, and III offence categories that are used to determine eligibility for diversion.

• Summary Offences

Summary offences are tried in provincial courts, called the *Ontario Court of Justice*, without a jury. Once Joe has appeared in court and the Crown has chosen to proceed "summarily," Joe can have an agent appear for him until the time of trial or plea rather than go to court himself. The maximum punishment for most summary conviction offences is a fine of \$2,000 and/or a jail term of up to 6 months, although there are some summary conviction offences that are punishable at up to 18 months in jail.

• Indictable Offences

Indictable offences are the more serious crimes, including murder. If Joe is charged with an indictable offence, he must personally show up in court. For most indictable offences, Joe has a choice, called an *election*, of whether to have his trial in the Ontario Court of Justice or in the *Superior Court of Justice*. The most serious indictable offences are always tried at the Superior Court level. Superior Court trials can be held with either a judge alone or a judge and jury.

Preliminary Inquiry

Before a case for an indictable offence is heard at the Superior Court, a *preliminary inquiry* is conducted at the provincial level. The purpose of the preliminary inquiry is for the judge or Justice of the Peace to decide whether there is enough evidence to proceed with the trial. If there is not enough evidence, the case will be dismissed. Otherwise, a full trial will be ordered.

As a family member, consider attending court for Joe's appearance. It might be helpful to provide Joe's defence counsel or duty counsel with information about his mental health history. You may also speak to the Crown about Joe and your input will be appreciated, but you have no obligation to do so. Remember: Anything you tell the Crown is not confidential.

TIP

ENTERING A PLEA

At the start of the preliminary inquiry or trial, Joe will appear before the judge and plead either "guilty" or "not guilty." This procedure is known as an *arraignment*.

It is important to remember that the plea "not guilty" does not technically mean "innocent." Rather, it means that Joe is insisting that the Crown prove whatever is alleged against him. If Joe pleads "guilty," he is not only admitting that he committed the act, he is also taking full responsibility for it. If Joe's lawyer intends to raise the defence that he was *not criminally responsible* (NCR), he may advise Joe to plead "not guilty." In this case, the defence would focus not on proving that Joe did not commit the act, but on showing evidence that he was not criminally responsible for the act.

Some people wonder why a lawyer would advise their client to plead guilty, even if client would likely be found NCR. The lawyer might be using the rationale that a guilty plea will result in a definite criminal sentence. If the offence is minor, the sentence will likely also be minor. But if Joe is found NCR, he will remain under the jurisdiction of the ORB until the board decides that he is no longer a danger to the public. This period may be longer than the criminal sentence Joe would have received with a guilty plea.

Talk to the lawyer about your family member's mental health concerns. This information will help the lawyer make the best decision about what route to take with your family member. If the lawyer suggests pleading guilty and taking a criminal sentence, talk to the lawyer about how to ensure that your family member's mental health needs will be met, both within the institution and upon release.

TIP

If the Accused Pleads Guilty

With or without a mental disorder, a person who pleads guilty will not receive a trial. However, they will go through a sentencing process. The judge will listen to the plea, hear the facts and perhaps hear witnesses from both sides, and then make a decision about punishment. In some cases, a *plea bargain* may be negotiated. This means

that in exchange for a guilty plea, the Crown agrees to certain terms. These terms may include withdrawing some of the charges, reducing the charge to a lesser offence, or asking the court for a lighter sentence.

If the Accused Pleads Not Guilty

If Joe pleads not guilty, and the judge decides that there is enough evidence to proceed, then the case will go to trial. If Joe was not granted bail then he will remain in custody until his trial is complete.

HOW MENTAL ILLNESS COMES INTO PLAY

At any point in the trial, mental illness can be raised as an issue. This can be done in two ways:

1. To look into whether the person is mentally fit enough to stand trial, or
2. To determine whether the person was too ill at the time of the act to know what they were doing.

Fitness to Stand Trial

At any time in the process, either side can raise the issue of "fitness to stand trial" (However, it is generally done at the bail hearing or the first court appearance). Canadian law presumes that everyone is fit to stand trial unless it is proven otherwise. 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* to determine whether the accused is unfit to stand trial. A typical fitness assessment takes 5 days; however it can be up to 30 days if the Crown and the defence agree. Under some circumstances, the assessment can be extended up to 60 days.

If, based on the assessment, Joe is found fit to stand trial, the process will continue as if the issue of fitness never came up. If Joe is found unfit, the judge may order him to receive treatment for up to 60 days in order to return him to a "fit" state. This is sometimes called a "make fit" order. This is the only time that the law allows treatment of an accused person without consent. Once Joe is mentally fit enough to stand trial, the judge can make a "keep fit" order, which will keep Joe in custody at the hospital receiving treatment, rather than in jail while he awaits his trial.

If Joe is found unfit to stand trial and remains unfit even after treatment, a formal finding of unfit to stand trial is made and his case will be transferred to the Ontario Review Board (ORB). The ORB will make a decision, or *disposition*, about his case. In some cases, the trial judge may make the initial disposition. The ORB must meet within either 45 days (if the judge did not make a disposition) or 90 days (if the judge did make a disposition) to make a decision about Joe. The Board has two choices.

They can issue:

1. A *detention order*

This means that Joe will have to stay in a forensic hospital until his case is reviewed again; or

2. A *conditional discharge*

This means that Joe can live in the community under conditions set by the ORB. The ORB will then review Joe's case yearly to decide whether he has become fit to stand trial.

Joe will remain under the care of the ORB until:

- *He becomes fit and is taken back to Court to stand trial;*
- *The Crown cannot prove that it still has a case against him; or*
- *He is found to be permanently unfit.* If Joe is never likely to become fit and he is no longer a danger to the public, the court may decide that it is in the best interests of justice to stay the charges against him.

Criminal Responsibility

One principle of our criminal justice system is that a person must be capable of knowing what they were doing and that it was wrong at the time of the act in order to be held responsible. It is important to understand that just because a person has a mental illness doesn't mean that they won't be found criminally responsible. Many people with mental illness are found guilty and given a regular sentence. The question is whether Joe's mental state at the time of his offence made him incapable of knowing the nature and consequences of his actions or of knowing that his actions were wrong.

In most cases, the court will order a psychiatric assessment to explore the issue of criminal responsibility. This will be used as medical evidence in a separate hearing to determine whether Joe is not criminally responsible (NCR). Assessment orders for this purpose are usually in force for 30 days, although they can be extended to 60 days if the court deems it necessary. Involuntary treatment during assessment is not allowed. The psychiatric assessment will be presented along with other evidence to determine whether Joe is NCR. If Joe is found NCR, he will be placed under the jurisdiction of the ORB. The ORB will make a decision about Joe's release based on whether they believe he is a danger to the public.

The defence can raise the issue of criminal responsibility at any stage of the proceedings. The Crown, on the other hand, can usually raise the issue only after a finding that Joe has committed the offence.

THE TRIAL

If Joe is fit to stand trial, the court process will continue. At the trial, the Crown and the defence will each call witnesses and present evidence to support their case. The Crown's job is to prove without a reasonable doubt that Joe is guilty of the offence. The defence's job is to show that the Crown has not been able to prove this. After all the witnesses have been called, each side will present its closing arguments - also called final submissions. The decision of the judge or jury is not whether Joe is more likely guilty or more likely innocent. They can only find him guilty if there is convincing proof of guilt.

This decision is called a *verdict*. If the trial was conducted with a jury, the members of the jury meet to decide the verdict. If they can't agree on a decision, the judge will declare a mistrial and a new trial will take place. If there was no jury, the judge reviews all the evidence and decides the verdict. A judge can usually determine a verdict immediately, but it can sometimes take several days or even weeks.

The primary role for you as a family member is to support Joe. You may also be requested or *subpoenaed* to be a witness by either Crown or defence. This is a legal obligation, not a choice. If you are subpoenaed, consider contacting whoever subpoenaed you in order to prepare for the trial.

TIP

Possible verdicts

In a trial involving someone who has a mental illness, there are three possible verdicts:

• *Not Guilty*

If there is not enough evidence to prove that Joe committed the act in the first place, he will be found not guilty and will be free to go home without any conditions. This is called an acquittal. If his mental illness is a concern, someone at the court may advise him to access mental health services.

• *Guilty*

A verdict of guilty means that the court believes Joe committed the act and that, despite his mental illness, he knew what he was doing at the time of the act.

• *Not Criminally Responsible on Account of Mental Distortion (NCR)*

This verdict implies that Joe committed the act but cannot be held responsible for it because of his mental illness. His case will be deferred to the ORB. The

ORB will make a decision, or disposition, about his case within 45 days. In some cases, the trial judge may make the initial disposition. If this happens, the ORB still makes its own disposition within 90 days. The disposition options of the judge or review board are:

- **Absolute Discharge**

If the ORB does not believe that Joe is a significant threat to the public, he will be released without conditions. Once an individual receives an absolute discharge, he or she is no longer under the authority of the court or the ORB.

- **Conditional Discharge**

With a conditional discharge, Joe will be allowed to live in the community (rather than in hospital) but with certain conditions. These conditions can include reporting to the hospital to provide urine samples or receiving counselling services. If Joe does not follow the conditions set out for him, he can be arrested again. Under a conditional discharge, Joe is still under the authority of the ORB and his case is reviewed yearly.

- **Detention Order**

A detention order will be given if the ORB believes that Joe will be a significant threat to the public if he is released. In most cases, Joe would be held in custody in a *forensic hospital*. This is a special psychiatric hospital for people who have come into contact with the law. The focus in forensic hospitals is on treatment and rehabilitation, not on punishment.

The decision as to which disposition to make is based on whether Joe is believed to be a danger to others, not on the seriousness of his crime. This means that if the charge is minor but Joe's mental health state does not improve and he is still seen as a potential danger to others, he may be under the jurisdiction of the ORB for longer than a criminal sentence would have been. However, the ORB is required to order the least restrictive option based on Joe's needs and the need to protect the public. If Joe is not deemed to be such a risk that he requires 24/7 detention, he can live in the community, either with the detaining hospital's permission or subject to a conditional discharge.

SENTENCING

If Joe is found guilty, there is a range of sentencing options the judge can choose from. The defence and Crown will be allowed to make suggestions, or submissions, as to the appropriate sentence. In making a decision, the judge will consider Joe's criminal record, his personal history, the impact on the victim, and the seriousness of the crime. For some offences there are maximum and minimum sentences that the judge must adhere to. Possible sentences for Joe include:

- **Absolute or Conditional Discharge**

The judge does not always have to convict, even if Joe is found guilty. A discharge can be given for certain offences if it is in Joe's best interest and if it is not contrary to public interest. Under a conditional discharge, Joe must follow certain rules, whereas with an absolute discharge, there are no rules. If Joe is discharged, he will not get a criminal record for his offence.

- **Probation**

Probation also involves release on conditions; however, in this case, Joe will still have a criminal record. Joe will be out of custody but under the supervision of a probation officer, who he will have to report to. He may also have to perform some type of community service. Probation involves the "suspension" of the sentence. If Joe breaks the conditions of his probation, his sentence will be re-imposed and he may also be charged with breaching probation.

- **Conditional Sentence**

This involves Joe serving a sentence of less than two years in the community, rather than in jail. The conditions attached to a conditional sentence, for example, house arrest, are generally more restrictive than with a conditional discharge or probation. If Joe breaks the conditions he may have to serve the rest of his sentence in jail. Not all offences are eligible for conditional sentences.

- **Fine**

This is a set amount of money that Joe will have to pay to the court as a penalty for his offence. In some cases, this fine is in addition to other penalties, such as probation or jail.

- **Restitution**

A restitution also involves payment, but in this case, the money goes to the victim rather than the court/government. This sum is meant to repay the victim for any injuries or damage to their property as a result of the offence.

• Imprisonment

Imprisonment is the most serious sentence because it takes away Joe's freedom. If Joe is sentenced to less than two years, he will serve his time in a provincial correctional institution. A sentence of more than two years is served in a federal penitentiary. In the provincial system, Joe is eligible for parole after 2/3 of his sentence, whereas in the federal system he may be eligible for parole after serving 1/3 of his sentence. In the case of an *intermittent sentence*, Joe would go to jail for blocks of time, such as weekends, and be on probation in the community in between these times.

Ask Joe's lawyer what you can do to help. Find out whether you can submit a written letter to the Court, or whether the Justice will allow you to speak at the time of sentencing. Your input will help them take Joe's mental health history into account when making a decision. If Joe is sentenced to imprisonment, contact the jail to let them know of his mental health issues and any medications he is on. If Joe is sentenced to probation, consider contacting his probation officer to let him or her know that you are interested in helping Joe through his probation term.

TIP

APPEALS

The decision made by the judge or jury is not always final. In some cases, a decision made on a criminal case can be reconsidered through an appeal. Joe can choose to appeal the verdict or just the sentence that was imposed. It is usually the accused who makes the appeal, but the Crown can also appeal if it feels the verdict was wrong or the sentence was too light. Appeals are only made after the trial is over, at which point the case will move to a higher level court. If the case was a summary conviction offence, the appeal will be heard at a Superior Court in the community where the trial was conducted. Appeals for indictable offences are heard at the Ontario Court of Appeal.

At an appeal, the judge decides at whether the trial was conducted properly, if there were any significant errors made during the trial, if there was enough evidence to support a conviction, or if the sentence was fair. The appeal court comes to one of the following decisions:

• *Acquittal*

If the evidence does not support the conviction, the appeal court may find the offender not guilty of the charge.

• *Dismissal*

If the appeal court finds that the trial was properly conducted and the evidence supports the conviction, or there was an error but it was not significant, the court may dismiss the appeal. The appeal court may dismiss an appeal against a sentence if the court is satisfied that the sentence fits the crime.

• *New trial ordered*

The appeal court may set aside the conviction and order a new trial if it finds that the trial was not fairly or properly conducted.

• *Substitute a verdict of guilt*

In a small number of cases, the appeal court may find the offender guilty of an offence and impose a sentence.

• *Vary the sentence*

The appeal court may change the sentence and either increase or lower the sentence, or remove or add penalties (such as a fine or probation).

- **APPEAL**

A formal request for a more senior court to review a decision made at a lower court level. For example, a verdict made at the Ontario Court of Justice can be appealed at the Superior Court of Justice level.

- **APPEARANCE NOTICE**

A written notice of a charge that tells the accused when they must appear in court. This notice is given as an alternative to arrest, if the accused is not believed to be a danger to others.

- **ARRAIGNMENT**

The procedure at the start of a preliminary inquiry or trial, in which the accused appears before the judge and is asked whether they plead "guilty" or "not guilty".

- **BAIL**

A court order permitting an accused person to be released from custody until their trial date.

- **BAIL HEARING**

A court session in which a judge or Justice of the Peace decides what to do with the accused in the time before their court date. If the police decide not to release the accused on their own, he or she must receive a bail hearing with 24 hours of their arrest.

- **COURT**

A judicial tribunal which hears and makes decisions about legal matters. In Ontario, there are different levels of court. They are, in order from lowest to highest:

- Ontario Court of Justice - The court which hears preliminary inquiries for all criminal cases, and which tries less serious criminal cases. The Ontario Court of Justice also presides over Bail Court, Mental Health Court, and Youth Court.
- Superior Court of Justice - The highest court in the province, which hears civil cases and more serious criminal cases. The Superior Court also reviews appeals from the Ontario Court of Justice.
- Ontario Court of Appeal - The court which hears appeals from Superior Court.

- **CROWN / CROWN ATTORNEY**

A lawyer who represents the government in criminal cases. The Crown's job is to bring all the evidence before the court to prove guilt beyond a reasonable doubt.

- **CUSTODY**

The confinement, detention, or imprisonment of an accused person under the law.

- **DEFENCE / DEFENCE LAWYER**

The lawyer who represents the person charged. His or her job is to ensure that the rights of the accused are protected throughout the justice process and that the accused receives a fair trial.

• **DIVERSION**

A way of addressing the "criminal" actions of a person with mental illness other than through the criminal justice system.

- Pre-arrest diversion - When a police officer chooses to do something other than arrest the person and/or lay charges.
- Court diversion - The Crown decides not to prosecute a person who has been charged with an offence, but instead put them through a treatment and/or support program.

• **DUTY COUNSEL**

A defence lawyer who is paid by the government and can assist in Bail Courts, Remand Courts, and Plea Courts. He or she is usually present in most courthouses in the province.

• **ELECTION**

A choice made by the accused about what type of trial they want. This refers to the court that the trial will be held in (Ontario Court of Justice or Superior Court) and whether they want to be tried by a judge alone or a judge and jury. An election is only given with the indictable offences listed in s. 554 of the Criminal Code.

• **FITNESS ASSESSMENT / FORENSIC ASSESSMENT**

A psychiatric assessment conducted by a mental health professional which looks into justice-related issues such as fitness to stand trial or criminal responsibility. This is ordered through a Form 48.

• **FORM 1**

An "Application by Physician for Psychiatric Assessment." This form allows a doctor to keep someone in hospital for up to 72 hours, even if it is involuntarily.

• **FORM 48** - See "Forensic Assessment".

• **HYBRID OFFENCE**

The category of offences in which the Crown can choose whether to try the case as an indictable offence or a summary conviction offence.

• **INDICTABLE OFFENCE**

The category in the Criminal Code which includes the more serious offences, each of which carries a maximum penalty. The most serious indictable offences must be tried at the Superior Court level. For others, the accused can make an election (see Election).

• **KEEP FIT ORDER / MAKE FIT ORDER** - See "Treatment Order".

• **MENTAL HEALTH ACT**

The Ontario law which describes conditions under which people are admitted to and treated in mental health facilities (hospitals) in Ontario.

• **NOT CRIMINALLY RESPONSIBLE**

When the court finds that a person, because of a mental illness, could not appreciate the nature or consequences of their actions, or did not know that the actions were wrong at the time of the act.

• **ONTARIO REVIEW BOARD (ORB)**

An independent panel that handles cases of people who are Not Criminally Responsible

or Unfit to Stand Trial. The panel is made up of five people: a lawyer, a psychiatrist, another mental health professional, a community member, and a chairperson who is usually either a senior lawyer or a retired judge.

• **PLEA BARGAIN**

An agreement that the accused will admit to a crime in exchange for a lesser charge or a lesser sentence.

• **PRELIMINARY INQUIRY**

A court session held early in the justice process in which the judge decides whether there is enough evidence to proceed with a full trial.

• **RECOGNIZANCE**

A guarantee signed by the accused that they will return to court on a set date, or pay a sum of money. It may be required that the accused deposit this sum of money into an account for safekeeping.

• **SENTENCE**

The punishment given to a person who has been convicted (i.e. found to be guilty) of a crime.

• **STAY**

To stop or suspend court proceedings either indefinitely or until the occurrence of a condition imposed by the court.

• **SUMMARY CONVICTION OFFENCE**

The category in the Criminal Code which includes the least serious offences. The penalties for summary conviction offences are generally low. Summary conviction offences are tried at the Ontario Court of Justice without a jury.

• **SUMMONS**

A written notice to appear in court on a set date. This notice is given as an alternative to arrest, if the accused is not believed to be a danger to others.

• **SURETY**

A person who has pledged to pay a sum of money if the accused fails to adhere to their bail conditions.

• **TREATMENT ORDER**

An order made by the court which directs the accused into treatment in order to render them mentally fit enough to stand trial. Treatment orders can be in effect for up to 60 days.

• **UNDERTAKING**

A solemn promise signed by the accused that they will return to court on a set date.

• **UNFIT TO STAND TRIAL**

A person is found unfit to stand trial when, because of a mental illness, he or she cannot understand what is happening in court, or is unable to communicate with their lawyer.

• **VERDICT**

A decision made by the court. This is expressed as either "guilty", "not guilty", or "not criminally responsible on account of mental disorder".