SUDBURY LEGAL INFORMATION CONFERENCE 2026

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STEPS IN CRIMINAL LAW PROCESS

STEPS IN CRIMINAL JUSTICE PROCESS



ARREST AND RELEASE



CASE MANAGEMENT



TRIAL PHASE

THE BAIL PROCESS

Release by police

- If arrested by police, accused can be released by a number of ways:
  - A) Released on a “promise to appear”; (PTA)
  - B) Released on an “undertaking to an officer”, with or without conditions;
- Police releases occur from the scene or from the police station.
- If police choose not to release, the accused is taken to bail court within 24 hours to appear before a Justice of the Peace, and have a bail hearing.

The Bail Process – Grounds for Detention

515(10)

- (a) PRIMARY GROUNDS: to ensure attendance at court;
- (b) SECONDARY GROUNDS: where the detention is necessary for the protection or safety of the public, including any substantial likelihood that the accused will commit a criminal offence if released; and
- (c) TERTIARY GROUNDS: where the detention is necessary to maintain confidence in the administration of justice.

The Ladder Of Release

- Released Without Condition (just a court date)
- Release With Conditions
- $ May be Pledged without deposited or be required to be deposited.
- Bail Verification and Supervision (EFry Locally)
- Surety Supervision (Non-residential or residential)
- Ankle Monitor

SURETIES

A surety is someone who agrees to supervise an accused person while they're released into the community on bail waiting for their criminal matter to be resolved in court.

1) Making sure the accused attends court when required.
2) Making sure the accused follows their bail conditions.
3) Calling police if the accused person breaks any of the bail conditions.

Conditions May be Varied

- Conditions in effect until cancelled or the matter is completed.
- Variance may be made with Consent of the Crown, or
- Through Bail Review to the Superior Court of Justice

CASE MANAGEMENT

Decision Phase

- CASE MANAGEMENT
  - Disclosure
  - Discuss – Counsel and Judicial Pre-Trial
  - Decide

Important Terms

- **Disclosure** –It is the Crown's responsibility to provide to the accused all of the evidence they possess. Typically includes police synopses, police notes, videos, pictures, witness statements, evidence testing, etc. Recent Developments are the increased use of body cam and dash cam video
- **Crown Screening Form** – outlines the Crown's position on sentence. ONLY an initial position. MAY be required to apply for a Legal Aid certificate.

Court Attendance

- Is not optional
- Dates can be hard to remember
- Days are hard to sit through and confusing
- Disclosure can be hard to obtain and retain
- Judges required to follow protocols – date to be set within 6 months of charge

Retaining Counsel

- Private Retainer
- Legal Aid Certificates – Financial and Legal Eligibility
- Duty Counsel

Legal Aid Ontario
Aide juridique Ontario

PLEAS AND SENTENCING

Importance of Guilty Pleas

- Only 9% of matters proceed to a contested trial.
- Everything else is ‘resolved’.

Resolution Types:

- No finding of guilt involved:
  - Withdrawal
  - Alternative Measures or Diversion
    - Aboriginal Diversion
    - Mental Health Diversion
    - Direct Accountability
    - Informal Diversion
    - Crown prosecution manual prevents agreement diversion for certain crimes.
  - Peace Bond
    - Common Law
    - S.810

Resolution Types (continued):

- Involves a finding of guilt, a “sentence”:
  - *Absolute Discharge
  - *Conditional Discharge
  - ----------
  - Suspended Sentence
  - Probation
  - Fine
  - Imprisonment – Straight, Intermittent, Provincial, Federal
  - Conditional Sentence Order aka House arrest



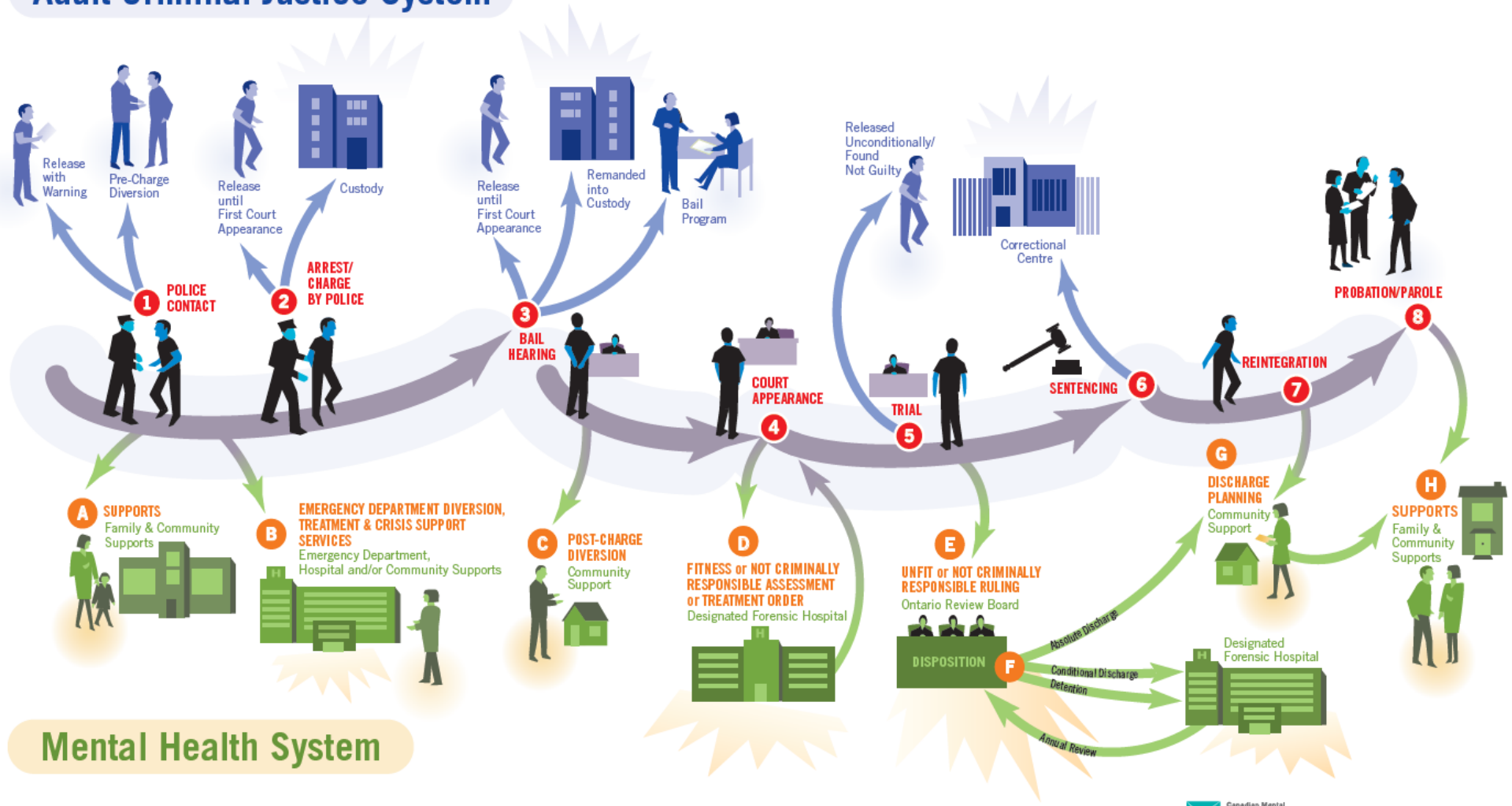
What is the Point of Sentencing? - S 718

- Protect society
- Promote respect for the law
- Maintain a just, peaceful and safe society
- Denunciation
- Deterrence – Specific and General
- Separate offenders from society
- Rehabilitation
- Repair harm
- Promote responsibility
- Be proportionate
- Be similar to other sentences for same
- Should not be ‘stacked’ disproportionately
- **Jail as a last resort . . .**

MENTAL HEALTH AND CRIMINAL JUSTICE

Navigating the Adult Criminal Justice & Mental Health Systems

Adult Criminal Justice System



Mental Health System

For more information, visit www.ontario.cmha.ca

Canadian Mental Health Association Ontario Mental health for all

Rose Zgodzinski www.chartsmapsdiagrams.com

Legal Aid Ontario
Aide juridique Ontario

Criminal ORB vs MHA / C&C

- Reacting to Harm vs Preventing Harm

Mental Health Act

Application for psychiatric assessment

s. 15 Physician - s. 16 Informant / JP - s. 17 Police Officer

- reasonable cause or grounds 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 if in addition the physician is of the opinion that the person is apparently suffering from 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,
- the physician may make application in the prescribed form for a psychiatric assessment of the person.
- These assessments are called “Form 1” (signed by a doctor) or “Form 2” (signed by a justice of the peace) assessments.

Fitness

"Unfit to stand trial" is defined in the Criminal Code.

. . . on account of mental disorder to conduct a defence at any stage of the proceedings before a verdict is rendered or to instruct counsel to do so, and, in particular, unable on account of mental disorder to

- (a) understand the nature or object of the proceedings,
- (b) understand the possible consequences of the proceedings, or
- (c) communicate with counsel;

Fitness - R. v. Taylor 1992 O.C.A.

- The “limited cognitive capacity”
- Narrowed to a series of questions - awareness of charges, the pleas available and possible consequences of the proceedings, and the various roles of the officers of the court.

Fitness - R. *v.* Bharwani, 2025 SCC 26

- (77) . . . requires an accused to be able to make reality-based decisions in the conduct of their defence and intelligibly communicate these decisions to counsel or the court. This necessitates a reality-based understanding of the nature or object and possible consequences of the proceedings, as well as an ability to understand the available options and their consequences, and to select between those options when making decisions. The accused is not required to make decisions in their best interests, but cannot be overwhelmed by delusions, hallucinations, or other symptoms of their mental disorder when making and communicating these decisions.

Fitness- Process

- Counsel will be ordered appointed (s. 672.24)
- A forensic assessment will be conducted
- A hearing will take place
- If fit, the court process continues
- If unfit . . .

Fitness- Treatment disposition

- An order for forced treatment may be made (s.672.58) (Make Fit)
- for a specified period not exceeding sixty days
- The court may order continued detention in custody until the completion of the trial, if the court has reasonable grounds to believe that the accused would become unfit to stand trial if released. (s. 672.29) (Keep Fit)
- If accused cannot be 'made fit' . . .

Verdict of unfit to stand trial

- An accused may later be tried where they become fit. (s. 672.32)
- **Prima facie case to be made every two years** (s. 672.33)

Not Criminally Responsible

- No person is criminally responsible for an act committed or an omission made **while suffering** from a **mental disorder** that rendered the person incapable of appreciating the nature and quality of the act **or** omission or of knowing that it was wrong. (s.16)
- Mental Disorder = "disease of the mind“ = any illness, disorder or abnormal condition which impairs the human mind and its functioning, excluding however, self-induced states caused by alcohol or drugs, as well as transitory mental states such as hysteria or concussion.

Ontario Review Board

- Disposition hearing based on the accused's condition at the time of the hearing weighing:
  - The safety of the public, which is the paramount consideration;
  - The mental condition of the accused;
  - The reintegration of the accused in to society; and
  - The other needs of the accused
- Orders include Detention, Discharges or a Stay (by the court)

FURTHER RESOURCES

stepstojustice.ca

Criminal Law Notebook

Canlii

A Practical Guide to Mental Health and the Law in Ontario (Ontario Hospital Association)

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