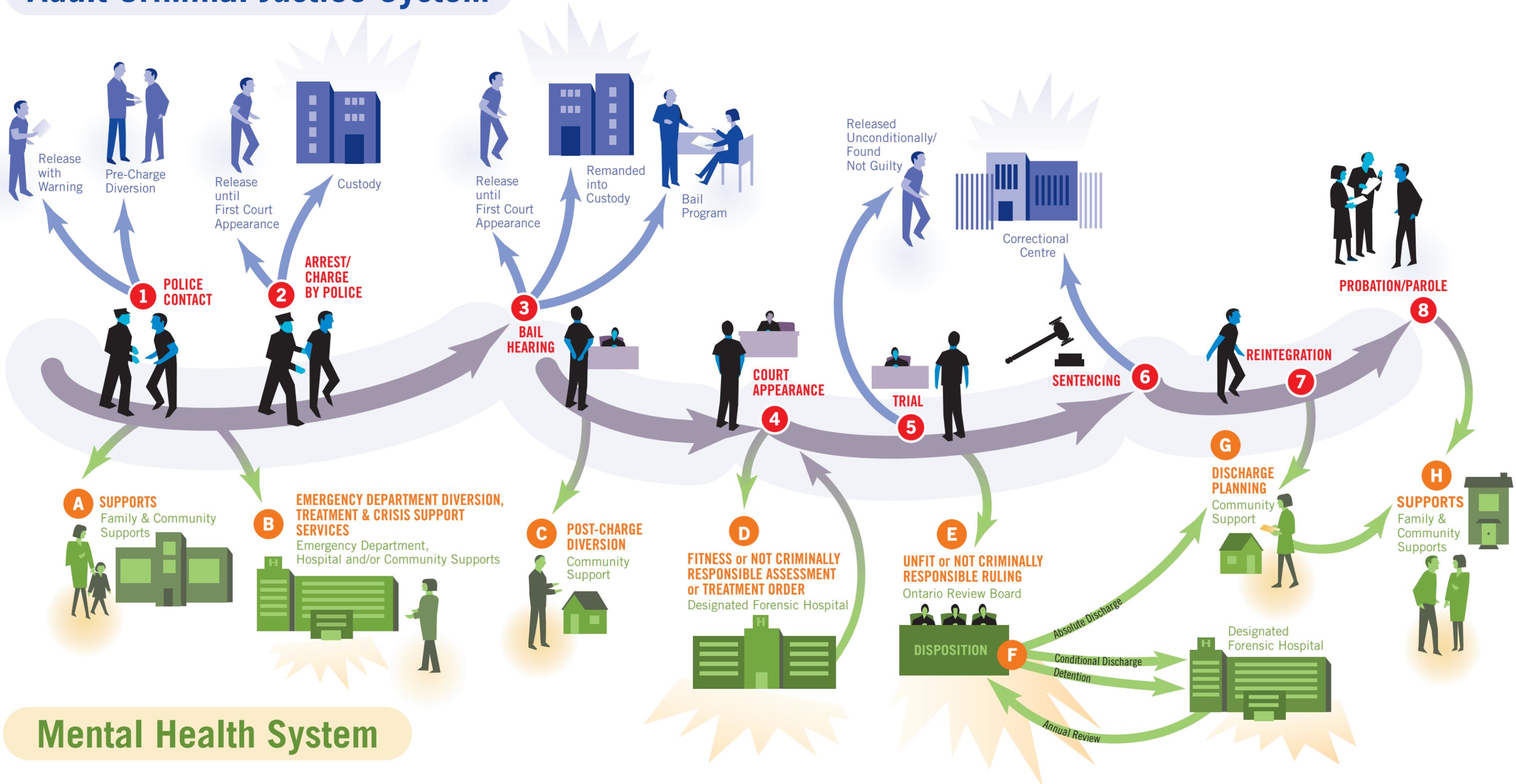


# Navigating the Adult Criminal Justice & Mental Health Systems

## Adult Criminal Justice System



## Mental Health System

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.

**3 BAIL HEARING** At the bail hearing, the court may decide to release the individual until their first court appearance. Alternatively, the individual may be remanded into custody at a detention centre or released with conditions requiring the individual to report to a bail program. Bail programs provide the courts an alternative to pre-trial custody by offering bail verification, supervision, counselling, support and referral services.

**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.

**7 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.

**8 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 justice system.

**B EMERGENCY DEPARTMENT DIVERSION, TREATMENT & CRISIS SUPPORT 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 DIVERSION** 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 or NOT CRIMINALLY RESPONSIBLE ASSESSMENT or TREATMENT ORDER** 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 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 RULING** 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 individuals 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-patients 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, <<http://canlii.ca/t/ksnp>> retrieved on 2013-11-15, Mental Health, the Justice System, and You: Understanding the Process and the People that can Help, A Publication of the Kitchener Human Services and Justice Coordinating Committee, 2010, <<http://www.cmhagrb.on.ca/dnn/Portals/0/Mental%20Health%20Justice%20System%20Booklet%20final.pdf>> retrieved on 2013-11-15