

## Court Diversion

Individuals living with mental illness or addictions sometimes come into contact with the criminal justice system. People living with mental illness or an addictions issue are not necessarily more likely to engage in criminal behaviour or have run-ins with the police — but it can happen — with some circumstances beyond their control.

Diversion offers an alternative to criminal sanctions and incarceration. The objective is to connect individuals living with mental illness and/or addictions issues to appropriate treatments or services. In general, there are three forms of mental health diversion: police pre-arrest, or pre-booking diversion; court diversion; and specialized mental health/wellness/drug treatment courts. This fact sheet provides information on court diversion. To find out more about other kinds of diversion, see “The Justice Process: A Guide for Families.”

### What is court diversion?

After charges have been laid, the Crown has the option not to prosecute the person—instead they could choose to divert the individual into mental health treatment and support. This process is referred to as court diversion.

There are many diversion programs offered in courthouses throughout Ontario. Each courthouse has different diversion programs. In some jurisdictions, a specialized mental health court may be available as well. To find out what option you have in your community, visit [www.mentalhealthhelpline.ca](http://www.mentalhealthhelpline.ca) or call 1-866- 531-2600.

### Criteria for court diversion

The Crown has final say on which cases qualify for diversion. A judge or justice of the peace does not decide what cases are eligible for diversion.

In the criminal justice system, offences are grouped into three categories:

- **Class I:** minor offences including shoplifting, causing a disturbance, or possession of a small amount of illegal substances.
- **Class II:** threats, public mischief, minor assault without injuries or weapons, or breaking and entering.

- **Class III:** severe offences including assault causing bodily harm, sexual assault, manslaughter or murder.

Usually, only offences the Crown considers minor will be approved for diversion (only class I and some class II). Other eligibility criteria for court diversion include:

- The individual must be living with a treatable mental illness.
- There is a reasonable prospect of conviction if the case goes to trial.
- There is a designated mental health facility and/or community support agency that has accepted the individual for services.
- The individual consents to participate in the diversion program (instead of going through trial).

### **How can I ask for the diversion program?**

Diversion can take place at any stage of the proceedings, but it is most conveniently done before the trial begins. Sometimes cases are pre-approved for diversion by the Crown. In other cases, the individual's lawyer, duty counsel, or court support worker can propose court diversion. If you think you or your family member/friend is eligible for diversion, you can ask the Crown and/or defense lawyer to consider it as an option. To do so, write a letter expressing why you think diversion should be considered, with details to illustrate how your request meets the eligibility criteria for diversion.

### **What can I expect of a diversion program?**

Diversion is voluntary. Agreeing to diversion is not the same as pleading guilty. Generally, agreeing to diversion means you are willing to take responsibility for your charges and do some things to finish your case without pleading guilty or having a trial.

If the case qualifies for diversion, a mental health court support worker will work with you or your family member/friend to develop an individualized program/treatment plan. This plan could include community support, supervision and treatment.

If you or your family member/friend consents to a diversion plan, the charges will be stayed or withdrawn. The decision by the Crown to stay or withdraw charges means they discontinue the prosecution and you or your family member/friend will not have to go back to court.

If charges are withdrawn, the prosecution of those charges is finished and those same charges can never be brought back. If charges are stayed, they can be re-instated within the following year in exceptional circumstances if you or your family member/friend fails to follow the diversion program and/or commit another offense. If that happens, the Crown could prosecute you or your family member/friend on those same charges again.