

MENTAL DISORDERS AND THE CRIMINAL JUSTICE SYSTEM

When persons with mental illness and their families are confronted with the criminal justice system, the pressure, intimidation, and fear can be overwhelming. This fact sheet offers some basic, helpful pointers. For more information, please call the Family Support Centre or refer to the list of additional resources.

What options do the police have when they are dealing with an offense involving a person with mental illness?

- 1) Informal resolution – If it is a first offense, and the police consider it minor, they may decide not to recommend criminal charges. Instead they may take the individual to a shelter, group home, detox centre, hospital, mental health clinic, family member's home, etc.
- 2) If their own observations or information received from others convinces them that the person seems to be suffering from a mental disorder and is acting in a manner likely to endanger his own or others' safety in any way (not restricted to the threat of physical violence), then police can apprehend the individual under the Mental Health Act and bring him to a designated mental health facility for examination by a physician. One medical certificate is required to hold the person for 48 hours; a second certificate is required to hold the person for 30 days. The person must be released if a physician does not complete a certificate indicating that he requires admission.
- 3) Restorative justice – If the individual admits to a crime and is willing to participate, police may divert him to a community program. Failure to comply with the conditions of the program cannot result in charges being laid at a later date.
- 4) Criminal charges – If the police believe the person has committed a criminal offense and charges are warranted he is not necessarily arrested. They may give the person an appearance notice or a summons to appear in court, possibly with conditions attached. Depending on the seriousness of the offense, the person's ability to understand the need to attend court, the ability of the person to be maintained safely in the community, and the interests of the public, the person may be placed in custody.

Police complete a Report to Crown Counsel, outlining the circumstances of the alleged offense and including detailed information about the individual's mental state. The Crown can initiate a stay of proceedings if a medical certificate has been completed and the person is certifiable.

What happens once charges are approved by Crown Counsel?

- 1) A summons to appear in court or a warrant for the person's arrest may be issued.
- 2) The person may be referred to the Alternative Measures Program, depending on the severity of the offense, past criminal record, and the person's capacity to take responsibility for the offense. If the person is found appropriate for Alternative Measures he may be placed under supervision, expected to comply with treatment or do community work, or given other conditions.
- 3) If the person is in custody he must be taken before a Judge or a Justice of the Peace within 24 hours (this may happen in the cells). He may be released on bail or remanded in jail until a later court date. If the person is suffering from a serious mental illness he is linked with a forensic liaison worker while on bail.

What is the difference between summary and indictable offenses?

Generally speaking a summary conviction results in a maximum jail sentence of two years less a day, and indictable offenses merit two years or more.

What are the rights of the accused person?

When someone is arrested they have the right to talk to a lawyer. If the police do not release them they have the right to a bail hearing within 24 hours.

When a person has been charged with an offense it is usually a good idea to obtain legal help. Most people are not used to the ins and outs of the Criminal Justice System, but a lawyer can help negotiate the rough spots. Legal Aid may be available, depending on the charge. The Lawyer Referral Service (operated by the Canadian Bar Association) will provide the name of a lawyer nearest to the person, and a half hour interview can be arranged for

\$25.00 plus taxes. The Salvation Army Pro Bono Lawyer program (604-694-6647) may also be available, depending on the offence.

As a family member, it is important to be aware that information about your relative's case is confidential unless your relative gives permission to a lawyer to discuss the case with you. This applies even if you are the one paying for the lawyer. Shop around to find a lawyer who recognizes how important your input is, and is willing to work with you to safeguard your relative's best interests. The Family Support Centre can supply you with a list.

How can the mental health of an accused person affect how his case is handled by the Court?

- 1) An accused person may be found unfit to stand trial because of a mental disorder. Mental fitness involves understanding the nature of the Court process and the possible consequences and being able to communicate with counsel. If fitness is called into question the Court may order a psychiatric assessment and if the person is found unfit to stand trial he falls under the jurisdiction of the B.C. Review Board. Two dispositions are possible:
 - a. Custody
 - b. Discharge with conditions.

Once the Review Board decides that the accused is fit to stand trial he is returned to court for trial and tried once again.

- 2) An accused person may be found not criminally responsible on account of mental disorder (NCRMD). The Court has to be satisfied that the person actually committed a criminal offense, but that he was unable to appreciate the nature or quality of the act or of knowing it was wrong, due to a mental disorder. After a person is found NCRMD the judge can make an immediate disposition or refer to the B.C. Review Board. One of three dispositions are possible:
 - a. An absolute discharge, which is similar to a pardon
 - b. A conditional discharge; e.g. supervision, counselling, prohibitions against drugs/alcohol/weapons, etc.
 - c. Detention in a designated psychiatric hospital in order to receive treatment.

The Review Board reviews the case at regular intervals.

What are the sentencing options if the person is deemed fit and not NCRMD?

Needless to say, jail is not the only option when a person is being sentenced by the court, although some offenses do require minimum jail terms. The range of sentencing options includes an absolute discharge, a fine, restitution, a suspended sentence, community supervision (probation), and a jail sentence (two years less a day – provincial jurisdiction) or prison sentence (two years or more – federal jurisdiction).

How can my family and I get through this ordeal?

- Always write things down.
- Ask questions.
- Set up visitation schedules between your family member and friends, so he does not feel abandoned and alone.
- Make time for yourself and other family members. Seek professional help or join a support group.
- Learn about mental illness and how it is treated.
- Remember: you are not to blame.

The North Shore Schizophrenia Society holds a regular monthly support group and the Family to Family education course twice a year. Peer counselling in person or by telephone is also available through the Family Support Centre.

Resources

North Shore Schizophrenia Society, Family Support Centre 604-926-0856, www.northshoreschizophrenia.org

Lawyer Referral Service 604-687-3221 (BC toll free 1-800-663-1919).

Mental Health Information Line 1-800-661-2121.

Inquiry BC 604-660-2421. Toll free outside the Lower Mainland 1-800-663-7867.