2 CONTEXT IS EVERYTHING

A Look at the Current State of Mental Health in Canada's Criminal Justice System

LEARNING OUTCOMES

After reading this chapter, you will be able to:

- Discuss the legal provisions for the mentally ill under provincial and federal laws (Ontario's *Mental Health Act* and Canada's *Criminal Code*).
- Differentiate between the various criminal court processes.
- Navigate the adult criminal justice and mental health systems.
- Outline the role of corrections and reintegration in Canada.
- Differentiate between the various processes that intersect as an individual moves through the adult criminal justice and mental health systems.

Introduction

As mentioned in the previous chapter, the way society views and manages individuals with mental illness has evolved, moving away from treating individuals in institutionalized settings and opting for community-based treatment and support programs. The conceptualization and implementation of "deinstitutionalization" has had a significant impact on both the criminal justice and mental health care systems. Both systems have separate and distinct functions; however, they often intersect when a person with mental illness engages in behaviour that crosses the threshold of criminality.

This chapter will closely examine the processes that make up both the justice and mental health systems by highlighting key delivery systems embedded in both. Also, the examination of provincial and federal legislation will demonstrate various authorities provided to both law enforcement and mental health professionals when interacting with an individual with mental illness. Lastly, this chapter will illustrate how one navigates these systems, closing on the role of corrections and reintegration into the community.

Understanding and Navigating the Criminal Justice and Mental Health Systems

The criminal justice and mental health systems often intertwine and an individual with mental illness will likely come into contact with one or both during the course of their lifetime. If a person with mental illness is fortunate to have the appropriate family and community supports in place, there is a great chance that he or she will never come into contact with the police. Unfortunately, for some people this is not the case and at some point police intervention may be required.

The Mental Health Act

The police have often been referred to as the "informal first responders" of Canada's mental health system (Adelman, 2003), and this comes as a result of several issues that will be discussed in Chapter 3. However, in short, when an individual is in crisis and there is no immediate support available to him or her, the police are usually dispatched to intervene. The outcome of an interaction between the police and an individual with mental illness relies on three main factors: the behaviour being displayed by the person with mental illness; the knowledge, skills, and abilities of the individual police officer(s); and the parameters of the law.

Section 17 of the ***Mental Health Act*** **(MHA)** outlines when a police officer can apprehend a person:

***Mental Health Act* (MHA)**
law that regulates the administration of mental health care in Ontario; the main purpose of this law is to regulate the involuntary admission of people into a psychiatric hospital

> 17 Where a police officer has reasonable and probable grounds to believe that a person is acting or has acted in a disorderly manner and has reasonable cause 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 in addition the police officer 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,
>
> and that it would be dangerous to proceed under section 16 [authorization by a justice of the peace], the police officer may take the person in custody to an appropriate place for examination by a physician.

DISCUSSION QUESTIONS

1. Can you think of an example of when a police officer would have to apprehend someone under the *Mental Health Act*?
2. Do you think the police are given too much authority under this legislation?
3. What issues could arise if the police were not given authority to apprehend someone under the *Mental Health Act*?

Moving Through the Criminal Justice and Mental Health Systems

The following describes the chain of events that could unfold for an individual who is moving through both the criminal justice and mental health systems.[1]

Emergency Department and Community Crisis Support

If an individual has been apprehended by the police under the MHA and *no criminal offence* has been committed, the person will be escorted to the nearest hospital's emergency department to be seen by the attending physician. The attending physician will assess the individual to ascertain whether he or she should be kept (involuntarily) for further assessment by a psychiatrist. If a physician opts to keep the individual in the hospital for assessment, a document called a Form 1 (an application for psychiatric assessment) is signed by the emergency department physician. This document commits the individual to stay at the hospital for up to 72 hours for further assessment. At the end of the 72 hours permitted by a Form 1, the person must either be released, be admitted as a voluntary patient, or continue to be held as an involuntary patient through the use of a Form 3 (a certificate of involuntary admission).

Community Treatment Order (CTO)

community treatment order (CTO)
a legal order that sets out the terms under which a person must accept medication and therapy, counselling, management, rehabilitation, and other services while living in the community

Bill 68 (also known as Brian's Law) amended the *Mental Health Act* in 2000 as a result of the tragic death of Brian Smith, an Ottawa television sportscaster. In 1995, he was shot and killed by a man who had been diagnosed with paranoid schizophrenia. Bill 68 fuelled the creation of the **community treatment order (CTO)** (CBC News/The Canadian Press, 2016). These orders allow individuals with a history of in-patient treatment of psychiatric disorders to enjoy the freedom of living within the community and give consent in advance for any treatment or detention that might be required should their condition deteriorate. A CTO is a plan that outlines care that is specific to the individual's needs. It may include medications the person must take and appointments that must be attended in order for the person to be released from a psychiatric facility by a doctor. The concept behind these orders is that the patient will do better in the community than in an institution. These orders are, however, controversial; critics of CTOs believe these orders could be overused and misused.

[1] Examples are in reference to the province of Ontario, so readers should refer to the specific mental health legislation in the province of their interest.

VOICES FROM THE FIELD

Forced-treatment Orders a Growing Controversy for Mental Health Advocates

By Sue Bailey, The Canadian Press

ST. JOHN'S—They're among the most coercive tools in medicine: community treatment orders [CTOs] can force people with mental illness to accept treatment—or face arrest.

Families and mental health officials say CTOs are a lifeline in desperate situations. But critics say they are dangerously prone to misuse, and jurisdictions across Canada are confronting questions about them.

Newfoundland and Labrador is reviewing how it uses them, while in Alberta they are being studied as part of an overall review of the province's Mental Health Act.

In Ontario, meanwhile, a lawyer says such measures are being over-issued to "the point of abuse." Anita Szigeti, a Toronto-based mental health law specialist, said they have become a convenient tool of control.

"It's supposed to be limited to those who are most chronically unwell with a demonstrated history of revolving-door hospitalization," she said in an interview. "It's being used for many people, if not most people, upon discharge from psychiatric hospital. Routinely."

St. John's lawyer Joan Dawson, who represents a man with schizophrenia, said an order against him last September was imposed without proper notice. Her client at one point went with a police officer under threat of arrest without knowing he was under those provisions, she added.

"A police officer, if they're under order, can enter somebody's house and use physical force to take the person," Dawson said in an interview. "These are law-abiding people.

"The power of the state is huge. It must be balanced with all kinds of safeguards and, in our client's case, it didn't happen. It's appalling."

"The power of the state is huge."

Szigeti said Ontario introduced community treatment orders in 2000 as a less restrictive approach that would typically help about 250 patients in the province avoid involuntary hospital stays. Today, between 5,000 and 6,000 orders are in effect, she said.

Compulsory treatment has strong proponents, especially among psychiatrists and family groups who've watched loved ones refuse help while in the throes of psychosis.

Legislation with community treatment options is in place across most of Canada. It helps ensure patients under such orders, usually renewed every six months and with varying consent requirements, follow medical regimes or be forced back in care. A task force was announced last fall in New Brunswick to craft similar measures in that province.

"Overused to the point of abuse."

But Szigeti said most of her clients resent orders that are difficult to get lifted once issued.

"They are overused to the point of abuse."

Some patients flee the province and cut off all ties with family to escape those controls, she added.

"A lot of the procedural rights and protections that are supposed to be part of the checks and balances to safeguard civil liberties ... are simply not being used."

Forced Treatment in Ontario

A spokesman for Ontario's Ministry of Health said it would take at least two weeks to confirm how many CTOs are in effect. David Jensen also said in an emailed statement that mandatory five-year reviews assess how rights advice is provided.

The most recent review in 2012, by research firm R.A. Malatest & Associates Ltd., noted that orders can be issued for patients who have not been reminded of their legal rights, so long as advisers "make their best effort to contact the consumer."

It also found the number of orders had grown to more than 3,200 by 2010 from an estimated 459 in 2003. It cautioned that with increased comfort with their use "comes the risk of straying from the original purpose of the CTO."

Newfoundland and Labrador's Practice Under Review

Health officials in Newfoundland and Labrador are now reviewing how the orders are used after the Mental Health Care and Treatment Review Board nullified one involving Dawson's client, a 58-year-old man with schizophrenia.

"There appears to have been little to no effort made to ensure compliance with the legislative safeguards, and no mechanism to trigger the automatic review provisions for CTOs," says the ruling, released Feb. 16.

"As stated by the psychiatrist in this matter, there are no CTO protocols or processes in place to ensure compliance with the (Mental Health Care and Treatment) Act."

"There appears to have been little to no effort made to ensure compliance with the legislative safeguards."

Those oversight lapses came eight days after a provincial Supreme Court decision last September in a case involving the same man, Dawson said. Judge William Goodridge ruled a previous CTO was also invalid in part because the psychiatrist did not provide supporting facts that the man met required criteria.

Safeguards to protect vulnerable citizens from "significant state intervention in the context of no criminal activity" must be upheld, Goodridge wrote.

"There is no option for non-compliance or partial compliance with these provisions."

Alberta Liberal Leader David Swann, a former family physician and public health consultant, is part of an ongoing five-year review of that province's Mental Health Act. Concerns about rights protections have come up there too, he said in an interview.

"They're an important contributor to helping patients who are otherwise unmanageable," he said of CTOs used in the province since 2010. "They're also a potential threat to individual rights and freedoms that we have to watch very carefully."

Source: Bailey, 2016.

Discussion Questions

1. What are the benefits of CTOs?
2. What concerns might there be about the use of CTOs?
3. What are the benefits of compulsory (forced) treatment?
4. What steps could be taken to ensure that CTOs are not misused?

The Criminal Code and the Criminal Justice System

Evolution of the Mental Disorder Provisions of the Criminal Code

Accompanying the shift resulting from deinstitutionalization, policies, laws, and the *Criminal Code* have also evolved to reflect the changing societal attitude required to better serve individuals with mental illness.

The provisions of the *Criminal Code* that relate to individuals with mental illness changed significantly in 1992 with the proclamation of Bill C-30. Prior to this time, both policy and law regarding individuals deemed "not criminally responsible" was not codified and detention was determined by the lieutenant governor.

In the mid-1970s the Law Reform Commission of Canada reviewed law and policy in relation to individuals with mental illness and produced 44 recommendations that included appropriate detention and treatment of mentally ill accused that had the rights of the individual and public safety in mind.

In response to the report, in the early 1980s the Department of Justice launched the Mental Disorder Project, which suggested that the provisions of the *Criminal Code* were in conflict with the *Canadian Charter of Rights and Freedoms*.

The Supreme Court of Canada ruling in *R v Swain* declared that the automatic detention of individuals found not guilty by reason of insanity without any hearing to determine the level of danger they pose was in conflict with the Charter.

When Bill C-30 was proclaimed in 1992, the amendment to the law changed the former verdict of "not guilty by reason of insanity" to "not criminally responsible on account of mental disorder" (NCRMD).

In 1999, the Supreme Court of Canada ruled in *Winko v British Columbia (Forensic Psychiatric Institute)* that detention is only warranted if the accused presents a significant threat to society. In cases where there is insufficient evidence to support that the individual is a significant threat, an **absolute discharge** must be issued.

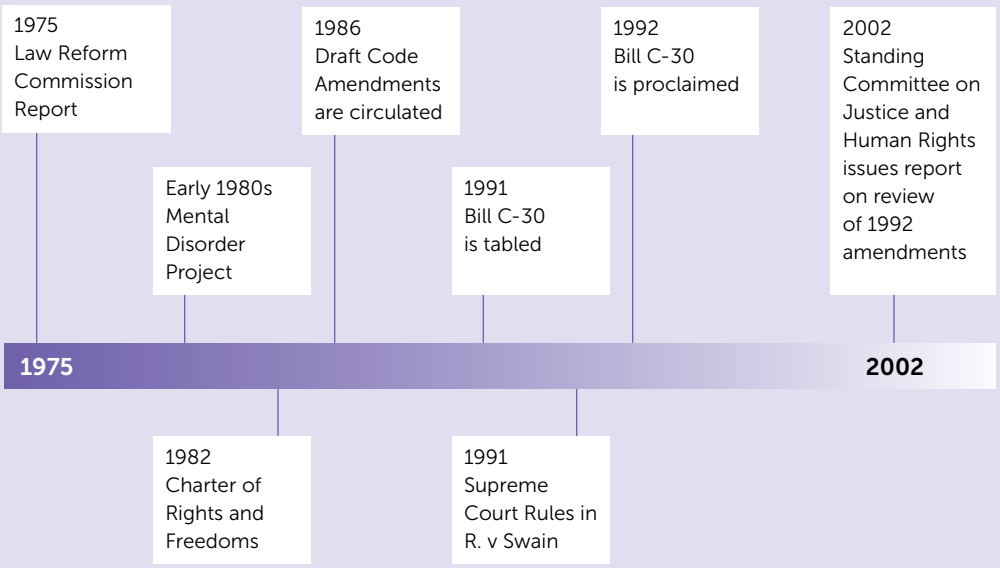
absolute discharge the lowest-level adult sentence that an offender can get; if an offender gets an absolute discharge, a finding of guilt is made but no conviction is registered, and the person is not given any conditions to follow (for example, not even a probation order)

And finally, in 2002, the Standing Committee on Justice and Human Rights conducted a review of the mental health provisions of the *Criminal Code* to address any current issues that had emerged and provided recommendations for a more systematic way to collect data (see Figure 2.1).

Criminal Offence

When police interact with an individual with mental illness, and through investigation it is determined that *a criminal offence has been committed*, the police will make the decision as to whether or not a charge (or charges) will be laid. The police often have the power to use discretion and therefore can make the most appropriate choice for the given situation. The least intrusive action that can be taken is simply the officer providing a "caution,"

FIGURE 2.1 Highlights of Federal Law and Policy Developments Since 1975



Source: Statistics Canada, Canadian Centre for Justice Statistics, 2003.

or warning, to the individual about the behaviour that warranted police attention. Although a caution can be given, the more common action that would occur is **pre-charge diversion**.

pre-charge diversion option for police to enter an individual into the mental health system instead of the criminal justice system when certain criteria are met

Pre-charge (Police-Based) Diversion

Pre-charge diversion occurs when a police officer refers an individual to a hospital or other mental health facility instead of involving the person in the criminal justice system. Police officers contemplating diversion will consider several factors to determine whether they should arrest the person or divert them to the mental health system. The primary factors the officer will consider are:

- the seriousness of the offence,
- whether the individual is known to the police (previous contact and nature of that contact), and
- whether there is risk of harm to self or others.

Police may also consider other diversion options such as introducing the individual to a community mental health organization, escorting the person home to his or her family, involving crisis response services to take over custody of the individual, or apprehending the individual under the MHA and delivering him or her to a hospital emergency room.

Some police officers may be hesitant to use diversion options. This may occur because of a lack of services to which individuals can be referred. Other officers may not use this option because of a lack of partnerships or working relationships among the police, hospitals, community crisis centres, and other resource facilities and agencies. Even when diversion options are used, in Ontario any police interaction that involves an apprehension under the MHA will result in the creation of a non-criminal police record.

Arrest to Sentencing: The Criminal Court Process

Arrest and Charges

When the police opt to charge an individual instead of diverting the person through the mental health system, the criminal process commences. If the police are not concerned about public safety, they can process the individual and release him or her from custody on a release form called a "promise to appear" or lay a charge without arrest by issuing a "summons" instead. These notices will inform the individual of the charge and pending court

appearance. In the case of a serious offence, or a less serious offence where the officer has concerns about public safety, the police may arrest the individual, charge him or her with a criminal offence, and then hold him or her for a **bail hearing**. The police must bring the individual before a bail court within 24 hours after arrest. It is a fundamental right of all Canadians not to be denied reasonable bail without just cause.

bail hearing
court session in which a judge or justice of the peace decides whether an accused will remain in custody prior to their court date; if the police decide not to release an accused on his or her own, the person must receive a bail hearing with 24 hours of arrest

Pre-trial Diversion

After charges have been laid, the Crown attorney has the option not to prosecute and may divert the individual into mental health treatment 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:

pre-trial diversion
option for the Crown attorney to enter an individual into the mental health system when certain criteria are met instead of proceeding through the court system

- **Class I:** These are the most minor offences, including shoplifting, causing a disturbance, and possession of a small amount of an illegal substance.
- **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 (Makonnen & Alam, 2016).

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 the charge.

In order for the Crown attorney to consider diversion as an option, the following criteria must be considered:

- Is the mental disorder the individual is living with treatable?
- Is there a reasonable prospect of conviction if the case were to go to trial?
- Is the offence alleged eligible for diversion? Only Class I and some Class II offences may be considered for diversion.
- Is there a designated mental health facility or community support agency available to accept the individual as a client for support and treatment?
- Will the individual consent to participating in the diversion program?

Diversion can take place at any stage of the criminal court proceedings, but it is most suitably done before the trial begins. The Crown may suggest

diversion; however, in most cases, it is the defence counsel who proposes court diversion and will demonstrate why the accused is suitable for the program. If the accused's case is eligible for diversion, a mental health court support worker will assist with the development of a program that may include community support, supervision, and/or treatment.

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

stay (a charge)
stop or suspend court proceedings either indefinitely or until the occurrence of a condition imposed by the court

Bail Hearing

At the bail hearing, it is the Crown attorney who typically will argue why there should be conditions put on an individual's release, or why a person should not be released at all. The justice of the peace who presides over the hearing will opt to deny bail and keep the individual in custody if he or she believes that (1) the individual is a danger to a victim, witness, or the general public, and/or (2) he or she might fail to appear in court.

If released, the individual might have to follow certain conditions, such as

- residing at a specific location;
- staying away from certain people or places;
- limiting travel;
- surrendering his or her passport;
- not possessing weapons or firearms; and/or
- reporting to the police, a probation officer, or bail supervisor.

If bail is granted, the justice may issue a bail order as a precaution to ensure that the individual returns to court.

Types of bail orders include:

- **An undertaking:** A solemn promise, signed by the individual, that he or she will attend court.
- **His or her own recognizance:** A guarantee signed by the individual that he or she will return to court on the set date, or he or she will pay a sum of money. It may be required that the individual deposit this money prior to release.
- **A recognizance with a surety:** Someone (usually a family member or friend) who knows the individual agrees to supervise the individual to ensure court attendance and that imposed conditions are met.

Trial

At the point of trial, the process will vary, depending on what type of offence the individual has been charged with. A "summary conviction" offence is generally less serious that an "indictable" offence. There is also a category of "hybrid" or "dual procedure" offences in which the Crown decides whether to prosecute the case as a summary offence or an indictable offence.

Summary Conviction Offences

Ontario Court of Justice
judges and justices of the peace deliver independent, impartial, and timely justice to thousands of people who come before this court in more than 200 locations across the province; the court deals with approximately 500,000 adult and youth criminal charges, hears millions of provincial offence matters such as traffic tickets, and serves more than 20,000 families

Summary offences are tried in provincial courts, called the **Ontario Court of Justice**, without a jury. The maximum punishment for most summary conviction offences is a fine of $5,000 and/or a jail term of up to six months, although there are some summary conviction offences that are punishable at up to 18 months in jail.

Indictable Offences

Superior Court of Justice
this court has jurisdiction over criminal, civil, and family cases, and is the largest superior trial court in Canada; the Divisional Court, Small Claims Court, and Family Court are all branches of the Superior Court of Justice

Indictable offences are more serious crimes, and include murder. For most indictable offences, the accused has the choice, called an "election," of whether to have his or her 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 and jury or a judge alone. The different court systems for Canada are outlined at the Department of Justice's website: http://www.justice.gc.ca/eng/csj-sjc/just/07.html.

Preliminary Inquiry

Before an indictable offence is tried 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; if there is enough evidence, a full trial will be ordered.

Fitness to Stand Trial

At any time during the criminal process, the Crown or the defence can raise the issue of "fitness to stand trial." However, this 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 of the court process.
- understanding the possible consequences of the court process.

- communicating and understanding the instruction of their lawyer.

The court will typically require a psychiatric or fitness assessment to determine whether the accused is fit 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, following the assessment, the accused is found fit to stand trial, the criminal process will continue. If, however, the accused is deemed unfit to stand trial, the judge may order the accused to receive treatment for up to 60 days in order to return him or her to a "fit" state. This is sometimes called a "make fit" order. If the accused becomes mentally fit enough to stand trial, the judge can extend the "keep fit" order, which will allow the accused to remain in custody while receiving treatment at a hospital, rather than awaiting trial in a correctional facility.

If the accused is found unfit to stand trial and remains unfit even after treatment, a formal finding of "unfit to stand trial" is made and his or her case is transferred to the Ontario Review Board (ORB). The ORB will make a decision, or disposition, about the 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. The Board has two choices. It can issue:

- **a detention order:** this means the accused will have to stay in a forensic hospital until the case is reviewed again; or
- **a conditional discharge:** this means that the accused can live in the community under conditions set by the ORB. The ORB will then review the case yearly to decide whether the accused has become fit to stand trial.

The accused will remain under the care of the ORB until:

- he or she becomes fit and is taken back to court to stand trial;
- the Crown cannot prove that it still has a viable case against the accused; or
- the accused is found to be permanently unfit.

If the accused is never likely to become fit and he or she 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 the individual.

Not Criminally Responsible

not criminally responsible (NCR) when the court finds that a person, because of a mental illness, could not appreciate the nature or consequences of his or her actions, or did not know that the actions were wrong at the time of the act, that person is NCR

Not criminally responsible (NCR) is an important legal defence for individuals who are suffering from a mental illness that made them incapable of understanding their actions at the time they committed a criminal offence. The *Criminal Code* deems everyone to be responsible for his or her own actions unless the contrary is shown. If this comes into question, 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 an accused is, or is not, criminally responsible. 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 the accused is NCR. If the accused is found NCR, he or she will be placed under the jurisdiction of the ORB. The ORB will make a decision within 45 days about the accused's release based on whether it believes he or she is a danger to the public. In some cases, the trial judge may make the initial disposition. If this occurs, 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 the accused is a significant threat to the public, he or she 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:** The accused will be permitted to live in the community, but with certain conditions. These conditions may include reporting to the hospital or receiving counselling services. If the accused does not follow the conditions set out, he or she can be arrested again. Under a conditional discharge, the accused is still under the authority of the ORB and his or her case is reviewed yearly.
- **Detention order:** A detention order will be given if the ORB believes that the accused will be a significant threat to the public if released. In most cases, the accused 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 punishment.

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

Sentencing

If the accused is found guilty following a criminal trial, there is a range of sentencing options the judge can choose from. The defence and Crown will be permitted to make suggestions, or submissions, as to the appropriate sentence. In making a decision, the judge will consider the accused's criminal record and 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 include:

- **Absolute or conditional discharge:** The judge does not always have to convict, even if the accused is found guilty. A discharge can be given for certain offences if it is in the individual's best interest and if it is not contrary to public interest. Under a conditional discharge, the individual must follow certain rules, whereas with an absolute discharge, there are no rules. If an individual is discharged, there will be no criminal record for the offence.
- **Probation:** Probation is a correctional method under which convicted offenders are supervised in the community instead of being imprisoned or after a period of imprisonment has been served. Probation services, which exist in all provinces, are responsible for preparing pre-sentence reports that focus on the accused's background. The reports may suggest that the offender make restitution to the victim, or perform some type of community service as part of his or her punishment. The report may also recommend that the offender be required to take treatment for alcohol or drug problems or accept counselling on mental health concerns or social skills (for example, anger management).

VOICES FROM THE FIELD

Man Who Beheaded Greyhound Bus Passenger Wins Right to Live on His Own—With Daily Monitoring

By Steve Lambert

WINNIPEG—A man who beheaded a fellow passenger on a Greyhound bus in Manitoba has won the right to live on his own eventually.

A Criminal Code Review Board has approved a plan that would allow Vince Li to move out of the group home where he now lives.

Li—who has changed his name to Will Baker—killed Tim McLean during a bus trip along the TransCanada Highway near Portage la Prairie in July 2008.

He was found to be not criminally responsible for the murder because of a mental illness—schizophrenia.

The board reviews Baker's file annually and has ruled he could move out on his own following an updated assessment report that would include conditions for living in the community.

Baker originally was kept in a secure wing at the Selkirk Mental Health Centre, but the board has granted him increasing freedoms almost every year.

The request for more freedom came from Baker's medical team, which said he has been a model patient and understands the need to continue to take anti-psychotic medication.

Even living on his own, he would be subject to several conditions that would include daily monitoring, regular check-ins with mental health professionals and random drug tests.

Baker sat next to the 22-year-old McLean on the bus after the young man smiled at him and asked how he was doing.

Vince Li was found not criminally responsible.

Baker said he heard the voice of God telling him to kill the young carnival worker or "die immediately." Baker repeatedly stabbed McLean who unsuccessfully fought for his life.

As passengers fled the bus, Baker continued stabbing and mutilating the body before he was arrested.

He won the right to leave the hospital and live in a group home last year.

Supporters say Baker and other people deemed not criminally responsible for their actions deserve the right to rehabilitation and freedom. But opponents, including some politicians and McLean's mother, have opposed the board granting Baker increasing freedom.

Source: Lambert, 2016.

Discussion Questions

1. What are the benefits of Vincent Li being reintegrated into the community?
2. In this case, are individual rights balanced with societal concern for public safety?

- **Conditional sentence:** This involves the individual 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 the individual breaches the conditions, he or she may have to serve the rest of the sentence in jail. It should be noted that not all offences are eligible for conditional sentences.
- **Fine:** This is a set amount of money that the individual will have to pay to the court as a penalty for the offence that he or she committed. In some cases, this fine is in addition to other penalties, such as probation or jail time.
- **Restitution:** Restitution also involves payment, but, in this case, the money goes to the victim rather than to the court or government. This sum is meant to repay the victim for any injuries or damage to property suffered as a result of the offence.
- **Imprisonment:** Imprisonment is the most serious sentence because it takes away an individual's freedom. If the individual is sentenced to less than two years, he or she will serve time in a provincial correctional institution. A sentence of more than two years is served in a federal penitentiary. In the case of an "intermittent sentence," the individual would go to jail for blocks of time, such as weekends, and be on probation in the community in between these times.

Appeals

The decision made by a judge or jury is not always final. In some cases, a decision made on a criminal case can be reconsidered through an appeal process. A convicted individual can choose to appeal the verdict or just the sentence that was imposed. It is usually the defence that makes the appeal, but the Crown can also appeal if it feels the verdict was wrong or the sentence was inappropriate. 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, a judge will determine whether the trial was conducted properly, whether there were any significant errors made during the trial, whether there was enough evidence to support a conviction, and/or whether the sentence was fair. The appeal court then comes to one of the following decisions:

- **Acquit the accused:** If the evidence does not support the conviction, the appeal court may find the accused not guilty of the offence.
- **Dismiss the appeal:** 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 is reflective of the crime.
- **Order a new trial:** 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).

mental health court specialized court for those who have exhibited criminal behaviour due to mental illness; focuses on treatment and rehabilitation of the individual, rather than punishment

Mental Health Court and Post-Charge Diversion Programs

Mental health courts first appeared in Canada in the late 1990s. Currently, these courts have been launched in Ontario, New Brunswick, Nova Scotia,

Newfoundland, British Columbia, Manitoba, Nunavut, and Yukon. Unlike the adversarial approach taken in the regular criminal court, this court focuses on collaboration and problem solving. Mental health courts attempt to address the underlying issue that caused the individual to come into conflict with the law. There are mental health workers on duty at the court and psychiatrists are available for consultation and assessments. The goal of these courts is to satisfy the criminal law function of protection of the public by addressing individual cases to examine the true causes that lead to conflict with the law. If the participant fails to follow through with their monitored support program, they can be returned to the regular court system. It should be noted that these specialized courts are limited by available resources that vary depending on community size and government funding (Erikson, Campbell, & Lamberti, 2006).

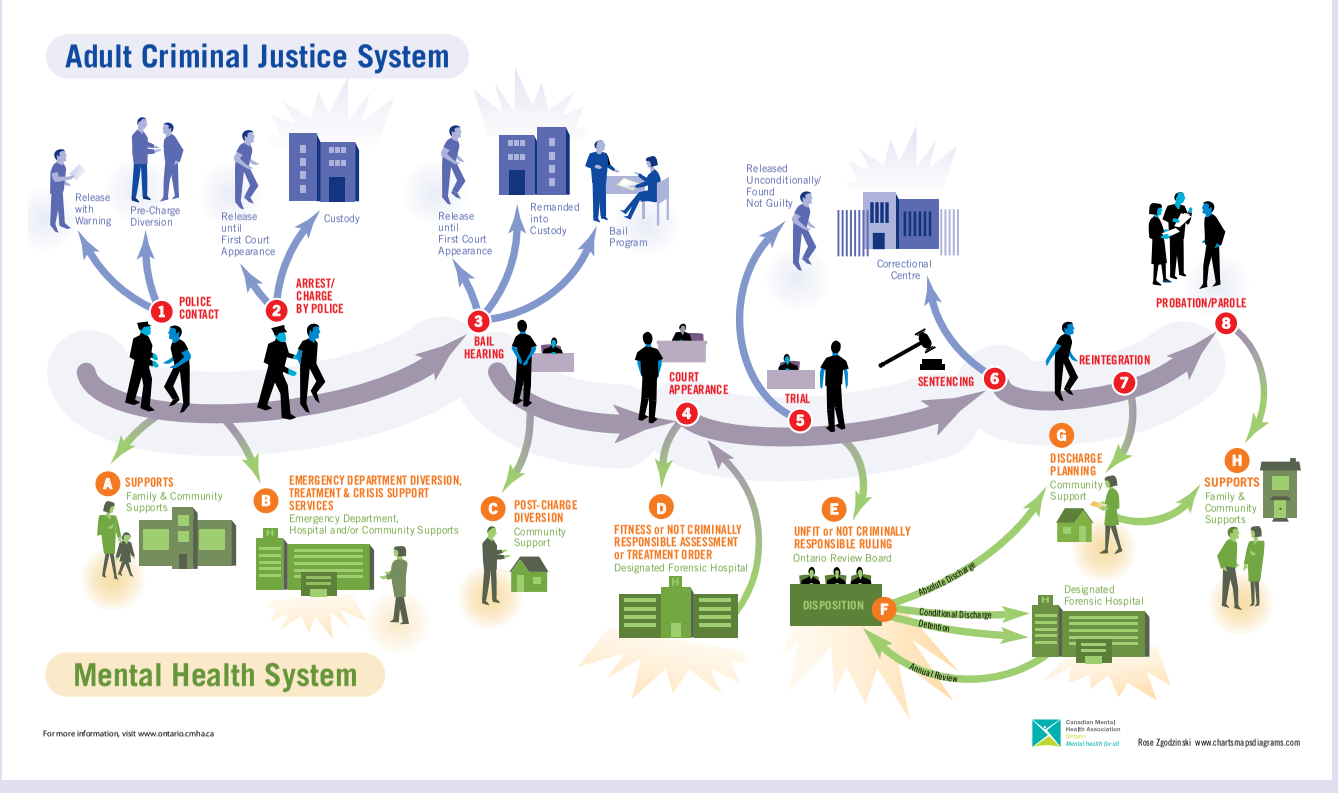
Corrections and Reintegration

For many convicted individuals with mental illness who do not meet the criteria for diversion, perhaps because of the nature of their crime, the consequence of a custodial sentence is a possibility. Provincial jails and federal prisons can be challenging and difficult places for individuals with mental illness. All inmates have a fundamental right to health care, including mental health care. The *Corrections and Conditional Release Act* outlines the obligations of the correctional system to provide this ongoing care.

Correctional Services Canada (CSC) identified 13 percent of male inmates and 29 percent of female inmates in federal prisons as having mental health needs at the time of admission—rates that doubled between 1997 and 2008 (Sapers & Zinger, 2012).

Comprehensive discharge planning is important for all inmates with mental illness to ensure their successful transition back into the community. Failure to be connected to community resources upon discharge is believed to affect recidivism rates, and Brown (2009) confirmed that contact with the criminal justice system following incarceration was significantly higher for inmates with mental illness than for those without (Centre for Addiction and Mental Health, 2013).

FIGURE 2.2 Navigating the Adult Criminal Justice and Mental Health Systems



Source: Centre for Addiction and Mental Health, 2015.

POINTS TO REMEMBER

- ✓ This chapter demonstrates that as a result of deinstitutionalization, people with mental illness are at increased risk of coming into contact with the criminal justice system, with police typically being the first point of contact. The justice and helping professions overlap in many areas, and it is important for police to understand that the individuals they deal with may have past history with the mental health system. The many complex and diverse reasons why individuals with mental illness may come into contact with law enforcement must be considered.
- ✓ When changes to the mental health system were being made, the criminal justice system responded by implementing diversion programs and, in some cases, establishing mental health courts. The creation and use of community treatment orders, which continue to be a controversial topic, was discussed. Further, the criminal defence of "not criminally responsible" due to mental illness was discussed to demonstrate the law's view on punishment versus rehabilitation.
- ✓ The criminal justice and mental health system have recognized that a collaborative approach not only serves individuals more effectively and compassionately, but it also serves society at large in keeping low-risk individuals out of the court and correctional systems.

KEY TERMS

absolute discharge, 36
bail hearing, 38
community treatment order (CTO), 32
Mental Health Act (MHA), 31
mental health court, 46
not criminally responsible (NCR), 42
Ontario Court of Justice, 40
pre-charge diversion, 37
pre-trial diversion, 38
stay (a charge), 39
Superior Court of Justice, 40

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