

MENTAL HEALTH DIVERSION

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Overview:

- Mental health diversion programs are intended for those with mental health issues charged with a minor criminal offence. These programs are meant to help improve their mental health issues instead of punishing them.
- Courthouses may have different methods of applying for these programs, but they can only be applied if the individual facing charges and their legal counsel convinces the crown to agree to it.
- The program is meant for offences that do not involve serious violence, large amounts of money, crimes with children as victims, impaired driving offences, or other serious charges.

How it works:

- If the court agrees to this program, the Crown will withdraw a person's charges if the person shows they are effectively dealing with their mental health issues by receiving recommended treatment and attending community rehabilitation programs.
- This is a voluntary program so the Crown can not force you to agree to it and can opt for the regular court process. Consult your legal counsel on which outcome is best for you.
- If the program is agreed upon by all parties, the individual does not have to plead guilty or participate in a trial, but they must admit to having a mental health issue and must agree to take responsibility for the crime they are charged with.
- A mental health court worker and the Crown will decide if an individual's mental health diversion is complete. This often takes around 6 months but there is no set time limit to complete it. A diversion may take longer depending on the crime one is charged with.
- Once the diversion is complete the Crown withdraws an individual's charges with no trial, criminal conviction, or criminal record.
- If a person is kicked out or can not complete the program, they are returned to the regular court system where they can participate in a trial or plead guilty.

Qualifications for mental health diversion:

- Examples of mental health issues experienced by those approved for the program: Schizophrenia, bipolar disorder, post-traumatic stress disorder, and the first episode of psychosis, cognitive disability, or brain injury.
- Minor offences that qualify: theft under \$5000, mischief under \$5000, possession of a small number of drugs for personal use, minor assaults, not following court orders and not showing up for court.
- The program does not apply to those who suffer from drug or alcohol addiction but courts do offer programs for people dealing with these issues.
- One must get bail, and if they can not they will be unable to qualify for mental health diversion.



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What the program involves:

- Programs may differ based on where the person lives, the mental health issues in question, and the resources/services needed to address them.
- Generally, a person will need to go to the court they are scheduled to, follow the direction of whoever is directing their program by attending programs in the community receiving treatment, and try their best not to get any more criminal charges.

Getting help:

- A person's legal counsel should be able to inform them of what their options may be. Mental health court workers can do this as well and court staff can direct individuals to a courthouse's mental health office for more information.

RESTORATIVE JUSTICE

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Overview:

- Restorative justice practices are a framework that works as a means of rehabilitation for breaking the cycle of crime and rebuilding a person's life.
- This philosophy is meant to provide safe opportunities for voluntary participation and communication for all parties involved in crime/conflict to make steps towards understanding, satisfaction, healing, safety, and a sense of closure.
- Values and principles involved with this process include, but aren't limited to recognition of harm, inclusion, accountability, facilitated dialogue, truth, voluntary participation, safety, choice, holism, humanism, and reparation.

How it works:

- The approach of restorative justice involves viewing crime as a violation of people and relationships. The process involves determining who has been hurt, what their needs are, and how those needs can be addressed.
- These processes include but are not limited to victim-offender mediation, restorative conferencing, and circle processes.
- Restorative justice circles use specified solutions and plans based on the individual circumstances of each case it is applied to. The use of these forums does not prevent incarceration for the offender if it is decided that incarceration is an appropriate means of dealing with the situation.
- Innate emotions of empathy, shame, compliance and altruism provide the foundation for engagement within these restorative justice forums between all associated parties. It provides the community, victim(s), and offender(s) with a mindset of satisfaction as each party is given a voice in the agreement that is to come towards the end of the conference.
- Types of incidents usually resolved by restorative justice: assaults, assault with a weapon, weapons, threats, bullying, cyberbullying, extortion, minor sexual assault, child pornography, theft, robbery, harassment, auto theft, mischief, drug offences, vandalism, shoplifting, harassment, classroom disruption and minor weapons-related events.

Qualifications for a restorative justice conference:

- The offender must acknowledge a certain degree of responsibility in the matter for the case to be resolved. If they maintain a stance of total innocence, fail to show remorse, and refuse to accept accountability, the case will proceed directly to court.
- Both the offender(s) and the victim(s) must agree to participate in the process, and if either person is a minor, the agreement must also be given by their guardians. Additional invitations are extended to those involved in the incident (e.g., peers, community members, responding officers, etc.)



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- A qualified facilitator must be available to guide the session.
- Conferences will not be held if they could potentially cause more harm as is sometimes the case if mental health issues are in play.

What the program involves:

- A facilitator will begin the conference by informing participants that the focus would be to discuss the impacting behaviour rather than judging a person's character. They explain that participation in this process is completely voluntary, and anyone can leave at any time which may result in the matter being handled differently. Participation in the conference and compliance with any reached agreement will finalize the matter.
- Instead of focusing on the punishment of the offending individual, restorative justice programs focus on the offending behaviour. The incident is addressed within the conference along with the damages caused by the offending behaviour. In doing so the damage is defined and all participants search for ways to repair the damage and prevent the recurrence of the behaviour.
- Once a consensus is reached among all participants, a civil contract is formally written up and signed by all parties. Such an agreement satisfies provisions in Ontario law regarding contracts that provide benefits to all parties that have been reached voluntarily by those involved who are of sound mind and of the age of majority.
- In cases where the agreement is breached and one of the parties brings the matter to civil court, the court may award damages or proceed to trial.
- All terms are explained to all parties prior to the decided-upon restorative justice practice.

Getting help/access to the program:

- Restorative justice programs can be used pre-charge, post-charge, pre-court, post-court, pre-sentencing, post-sentencing and during incarceration. Holding the conference soon after the incident is found to have the most impact with pre-charge conferences being the most efficient as it is cost-effective and provides closure for both the offender and the person harmed.
- Access to these practices comes through referrals via institutions on a case-by-case basis. Case referrals come from police divisions, schools, and agencies that support the usage of restorative justice practices.

YOUTH JUSTICE

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Overview:

- Once a case makes it to the court system, the crown takes over responsibility for any cases for a young person that is between the ages of 12 and 17.
- A diversion for youth is an offer that the Crown can make for youth to deal with criminal charges outside of court. It allows youth to deal with their charges without a trial or pleading guilty. If the Crown cannot prove its case against a youth offender it should not offer a diversion and withdraw the charges.
- These offers are called Extrajudicial Measures (EJM), Extrajudicial Sanctions (EJS), or informal diversion.

How it works:

- Participation in EJM, EJS or informal diversion means the offender's court case is put on hold while they attend a referral program, take a course or complete other tasks away from court.
- The police can offer EJM or informal diversion before an offender is charged with a crime while the Crown can only offer it after the police have charged the offender. EJS can only be offered by the Crown after the police have charged the offender.
- If the offender identifies as Indigenous, they may be able to access Indigenous diversion programs that are available in some courts. The program is taken out of the criminal justice system and the case is dealt with by an Indigenous organization or community. It is possible to enter this diversion from custody and not go for bail.
- If the offender is between 12 and 17, it is a protocol for the police to consider offering EJM or informal diversion before charging the offender. The Crown can offer any of the three diversion choices when the case proceeds to the court system.
- If any of the listed diversion choices are offered, an offender is not required to accept. It is recommended to consult with a lawyer before deciding the best course of action.

Qualifications for youth diversion programs:

- The police choose whether to offer EJM or informal diversion before charging an offender with a crime. They may not offer either if an offender has hurt someone before, was found guilty of a different crime before, or has been offered a diversion program in the past.
- The Crown considers a number of factors when deciding if they should offer a diversion program that includes: age, previous criminal history, previously completed diversion programs, specifics of the offence, history of social circumstances, the degree of harm to the victim, if violence/weapon was used, the drive in the offender to make amends, duration of the trial, and the possible sentence if found guilty.

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What the programs involve:

- There are different types of youth diversion programs that depend on where the offender lives and what the charge(s) may be.
- The Crown and police both use formal diversion programs when offering either an EJM or EJS.
- EJMs given by the police usually consist of a referral to a community program, a caution, or a verbal/written warning.
- In cases where the Crown offers an informal diversion, they let you complete certain actions to take responsibility for the offence.
- Some examples of diversion offered by the Crown include a formal caution from the Crown, an informal plan for community service, repairing damage, or a program to improve behaviour.
- Formal EJM or EJS programs include attending courses designed by official diversion organizations.
- EJS is the most serious form of diversion program because if decided upon, the youth record lasts for 2 years rather than 2 months as with other diversion programs.
- Once a program has been agreed upon it must be followed appropriately without error. If any conditions are breached the offender's case may return to the formal court system. If the offender is having trouble completing the program they can speak to their lawyer or duty counsel to speak to the supervisor of the program to possibly change the program.
- Once any of the programs have been completed the offender's lawyer or youth court worker should tell the Crown.
- When a diversion program has been completed, whoever manages the program can either provide the offender or the Crown itself with official documentation for completing the program.
- When the case has been closed the offender's charges are usually withdrawn or stayed. If withdrawn the case can never be reopened and if stayed then the case is closed but can be opened within 1-year on rare occasions. After 1 year the case can never be reopened.

Getting help/access to the program:

- Youth can gain access to the program after being offered it by either the Crown or police services. They are not required to accept and should always consult a lawyer or duty counsel before deciding what the best option may be.
- For Indigenous youth trying to gain access to Indigenous diversion programs, they can speak to a lawyer, duty counsel, or Indigenous court worker for advice and further information.

MENTAL HEALTH DIVERSION SOURCES

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RESTORATIVE JUSTICE SOURCES

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