

Mental Health Court Support
Services
Policies and Procedures
First Edition

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Mental Health Court Support Services Policies and Procedures Manual

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Introduction

The Mental Health Court Support Consortium is a formal network of organizations which provide mental health court support services to the five courthouses within the City of Toronto. The partnering organizations include the Centre for Addictions and Mental Health (CAMH), the Canadian Mental Health Association (CMHA), Comprehensive Rehabilitation and Mental Health Services (COTA), and Community Resource Connections of Toronto (CRCT). The development of this Policy and Procedures Manual stems from a recognized need to integrate the mental health court support services operating within the five courthouses into a common program with a shared vision and mission and consistent operational policies and procedures. This manual serves as a current reference of necessary information for staff and management in the partnering organizations and for consumers as well as other stakeholders of these services.

This Manual is composed of two parts. The first describes the policies and procedures which are common to all mental health court support services operating in courthouses across the City of Toronto. The second details the procedures which operate within individual court support services within specific courthouses in the city. Though specific procedures may vary from one courthouse to another to reflect the particularities in effect at each courthouse, the court-specific procedures are congruent with and indeed are superseded by the policies and procedures identified as common across mental health court support services in the city.

The production of this manual is the result of the cooperative work of the staff and management across the partnering organizations which collectively compose the Mental Health Court Support Consortium. Further contributions were made by those who participated in the drafting, review and approval process.

The Policy and Procedures Manual is a living document. As such, the manual is subject to an ongoing review and revision process by the staff and management of organizations providing mental health court support services and by the Mental Health Court Support Consortium.

1. Mental Health Court Support and Services Program Vision & Mission

Vision

Reducing and preventing the involvement of every person with serious mental illness in the criminal justice system

Mission

The Mental Health Support and Services Program provides consistent high quality services meeting the needs of people with serious mental illness throughout the courts in Toronto by:

Providing quality mental health triage and social support

Coordinating access to effective local mental health services

Referring to specialized and intensive services, as appropriate

Diverting, when appropriate, people with mental illness from the criminal justice system to local mental health care and social services

Developing an effective network of services in local communities

Liaising with local hospitals, mental health and social service agencies, and the criminal justice system, including police, Crown attorneys, defence counsel, courts

Promoting effective relationships between mental health services and the criminal justice system

Implementing a program of continuous quality improvement and program evaluation to achieve high quality of services throughout the network

Participating in research, education and training activities in support of the program's vision

2. General Description

2.1 Program Goals

The goals of the on-site Mental Health Court Support and Services (MHCS&S) Program in Toronto are:

- To provide quality mental health support and triage, especially pending the determination of fitness to stand trial
- To co-ordinate access and refer to local mental health services, including specialized and intensive services, where appropriate
- To divert, when appropriate, people with mental illness from the criminal justice system to local mental health care and social services
- To participate in research, education and training activities in support of the program's vision

2.2 Target Population

The primary target population of the MHCS&S Program is any individual aged 16 or older who has a serious mental impairment, including dual diagnoses and concurrent disorders, and has been charged with a criminal offence in Toronto. However, other individuals who could potentially benefit from MHCS&S (such as individuals with acquired brain injuries) who have been charged with a criminal offence may also be considered.

2.3 Referrals to Program

2.3.1 Referral Source

Anyone may make a referral to the Court Support Program – the individual who has been charged, family or friends of the accused person, Crown, defence and duty counsel, judges, other court staff, police, mental health professionals and community agencies.

2.3.1 Discretion of MHCS&S Staff

Referrals are accepted or rejected at the discretion of MHCS&S staff. Some examples of reasons for rejecting a referral include but are not limited to: referral does not fit criteria for program; staff member has a full case load; individual is uncooperative and not interested in receiving services; staff member feels threatened or fears for their personal safety.

2.3.3 Referral Procedure

Referrals can be made in two ways: (A) in person (or by phone) to the MHCS&S staff member directly or (B) by completing the referral form (see **Appendix 1**).

2.3.4 Consent of Counsel

The staff member should seek the consent of the individual's legal counsel (defence/duty counsel) before interviewing the individual under the following circumstances: the individual is currently being held in custody; the individual is under the age of 18 years; or, the individual wishes to apply for Mental Health Diversion. Consent of defence/duty counsel is also necessary where the court or Crown asks the court worker to interview an accused for the purpose of producing recommendations to the court about a potential service care plan. Where the individual is seeking consultation or linkage to mental health or community supports, consent of counsel is not required. In all circumstances, however, the referred individual must be advised by the MHCS&S staff member of the limits of confidentiality prior to being interviewed, and consents should be obtained where appropriate (see Warning of Limits of Confidentiality **Section 3.3.1**).

2.3.5 Repeat Referrals

A prior client of the program who has been re-arrested after being discharged from the program may be eligible for re-admission. Clients who have been involved with MHCS&S in the past will keep the same client number (found on the first Intake Information Form), but will receive a new charge set letter and a new Intake Form will be completed. *Please note that there are different agency policies concerning discharge forms. Discharge forms are not always kept at the court, and may be sent to head office for final processing.*

2.4 Service Outline

The services provided at all Toronto courthouses by the Mental Health Court Support and Services program include, but are not limited to:

1. determining whether potential clients are appropriate for the program;
2. facilitating the process of mental health diversion to eligible candidates;
3. providing consultation services (to clients, family members, lawyers, and community service providers);
4. providing short-term case management (may vary and is limited at all courthouses).

3. Intake & Assessment

A note about the Personal Health Information Protection Act:

The *Personal Health Information Protection Act* sets out a framework for the protection and sharing of personal health information, including:

- Rules about collection, use and disclosure of personal health information
- Rules about consent, capacity and substitute decision-making
- Rules for access to and correction of records of personal health information
- Rules that permit a capable client to withdraw consent to the collection, use and disclosure of his or her personal health information; and that would allow clients to instruct court support workers not to use or disclose personal health information for health care purposes (sometimes referred to as the 'lockbox' although this term is not found in the legislation)

Court support workers should be familiar with any policies and procedures adopted by the mental health agencies they work for, as a result of this legislation. Clients may request further information about your agency's information and privacy practices, which they are entitled to have under the Act.

Intake Policy

MHCS&S staff shall undertake a full Intake Process with each client entering the program.

Intake Process

The Intake Process is used to obtain relevant information about the client that can help determine the individual's service needs and to develop an appropriate service care plan. The following section outlines the recommended procedure that court support staff can use during Intake for prospective clients. Although the staff member should strive to provide timely assistance, it is recognized that multiple factors can complicate the process and staff members should use their judgment on how swiftly to proceed.

3.1 Obtain Permission from Legal Counsel

The MHCS&S staff member should obtain consent from legal counsel when there is a request for services that could have legal implications (such as mental health diversion, bail release plans, etc). Consent can come from defence counsel (if retained) or from duty counsel. Referrals that come directly from counsel are considered implicit forms of consent. If there is a referral from someone other than defence counsel, defence counsel should be notified and give consent.

3.2 Review Collateral Information

It is important to keep in mind that under the *Personal Health Information Protection Act*, there are specific rules that govern when you may or may not collect personal health information about a client from a third party. These include: where you have the capable client's consent, or the consent of his or her substitute decision-maker; and if you need the information in order to provide health care and you cannot get it directly from the individual in either a timely or an accurate way.

It is always best to collect and/or review a client's information with the consent of the client, if the client is capable; or his or her legal representative. If you determine that the prospective client is incapable (and this should be done according to your agency's policies and procedures) of providing that consent, you should obtain it from his or her legal representative, such as defence counsel or his or her substitute decision-maker.

There are specific rules about consent, capacity and substitute decision-making in the *Personal Health Information Protection Act*. There are also rules that could prevent you from later using any personal health information you collected, if you collected it from someone other than the client because you had concerns about getting it in a timely or accurate way. Specifically, a client could instruct you not to use the information collected from a family member, or could withdraw his or her consent to your indirect collection. There are also rules that permit a capable client to withdraw consent to the collection, use and disclosure of his or her personal health information; and that would allow clients to instruct court support workers not to use or disclose personal health information for the purposes of providing health care.

Court support workers should be familiar with any policies and procedures adopted by the mental health agencies they work for, that deal with the collection, use and disclosure of personal health information.

It is useful to review the Crown's brief and/or disclosure for background information and information pertaining to the individual's alleged offence(s). These sources usually include: a record of arrest, the synopsis of the alleged offence, the Crown's Show Cause form (where available) and the accused person's criminal record (where available).

When the referral source is someone other than the prospective client, the staff member should collect any relevant information from this person regarding the prospective client. In addition to the referring source, the court support staff member may also wish to speak with other collateral informants such as the prospective client's family members or service care provider(s). Collateral informants are helpful as they can usually supply additional information and sometimes be more objective about the prospective client's experiences. They can also often provide information about the individual over time. However,

caution should be used when collecting information from any third parties, especially those who are also complainants in the accused individual's court matter.

3.3 Conduct Intake Interview with Prospective Client

3.3.1 Warning of Limits of Confidentiality & Voluntary Nature of Program

At the outset of interview, the prospective client should be cautioned that any information they provide will not be kept strictly confidential. Specifically, information and documentation regarding the client's psychiatric history may be made available to the Crown or the court. (Please note that MHCS&S staff should use their discretion and only provide information in the most general sense possible. See Confidentiality Section for details of when information is shared with the Crown and court.) The MHCS&S staff member should also advise that participation in the program is voluntary and there is no legal obligation to provide information or agree to any treatment. If the individual still wishes to participate in the interview, the MHCS&S staff member should notify them that they may still refuse to answer specific questions.

This warning *must* be provided at every intake interview, especially given that the cognitive functioning or judgment of prospective clients may be impaired as a result of the presence of a severe and persistent mental illness. It should be noted in the client file that this warning has been given. Further, the MHCS&S staff member should obtain an express consent (either oral or written) for the release of their personal health information to anyone who is not directly involved in providing the client with health care, e.g. the Crown or the courts.¹

3.3.2 Express, Implied and No Consent under Health Privacy Legislation

The *Personal Health Information Protection Act* sets out rules that tell health information custodians (such as a mental health agency and their agents (such as MHCS&S staff) when they must obtain a client's consent to collect, use or disclose the client's personal health information. The Act also says when the consent must be express (either a signed consent) or oral (given verbally by the client, in which case it is important to document it in the client's service care plan. In many cases, where the use or

¹ You may occasionally hear people refer to the "circle of care" in relation to when you can rely on a client's implied consent to collect, use or disclose his or her personal health information under the *Personal Health Information Protection Act*. This term is **not** in the Act. The Act permits a health information custodian who receives personal health information from an individual, his or her substitute decision-maker or another health information custodian, to collect, use or disclose that information in order to provide health care to the individual based on an implied consent **unless** the health information custodian is aware that the individual has expressly withdrawn the implied consent.

disclosure of the information relates to providing health care to the client, the Act allows you to rely on a client's implied consent. However, it is important for MHCS&S staff to familiarize themselves with their own agency's policies on this issue, which may or may not state when it would be appropriate to rely on the client's implied consent.

In some cases, the Act permits personal health information to be used and disclosed without consent. Again, it is very important for MHCS&S staff to be aware of their agencies' own policies in this regard. Staff must also consider whether the prospective client is capable of providing these consents, and when it is appropriate to seek the consent of the client's substitute decision-maker.

3.3.3 Interview Components & Tools

The MHCS&S staff member's primary goal is to collect information that will assist in developing a service care plan for the client. At times this may involve obtaining information from the client about salient factors or events which preceded or occurred at the time of the alleged offence and which are related to the accused's state of mind at the time of the alleged offence. Such information may be required to develop a service care plan aimed at reducing the likelihood of further contact by the client with the criminal justice system. The purpose of collecting such information is to facilitate clinical rather than adjudicative processes. As such, the staff member should use caution in recording information from the client regarding the facts of the alleged offence to ensure that information in client's clinical record is not used to incriminate the client.

After receiving consent to participate in the Program from the prospective client, the MHCS&S staff member should inquire about the client's demographic information and health history. If the staff member feels it is warranted he/she may review the client's mental status as well. Although it is recommended to gather as much relevant information as swiftly as possible, it is recognized that the engagement and information gathering process can take a longer period of time depending on the individual's needs and functioning level.

Components of the Intake Interview include:

Health History - The staff member should inquire about the prospective client's health history, including (but not limited to) medical conditions, psychiatric conditions, current health supports, and past hospitalizations.

Demographic Information – The staff member should collect information required on the Intake Information form (see **Appendix 2**), which includes basic information (age, address, housing situation, etc), legal information

(custody status, criminal history, charges, etc.) and other demographic information (contact details about community supports, financial needs, etc). Some of these details may be available from collateral documents and need only be verified with the individual.

Mental Status – Noting a client’s mental status is helpful in ascertaining the individual’s current level of functioning. Staff members may wish to note the individual’s appearance, behaviour, mood, affect, speech, presence of perceptual disturbances or thought disorder, thought content and presence of suicidal or homicidal/violent ideation.

Other Helpful Information – It is also important to assess the individual’s community support needs such as housing, financial assistance, vocational and/or educational goals, and assistance with activities of daily living. The MHCS&S staff member may evaluate the individual’s motivation for change and openness to assistance. Finally, the staff member must determine what specific way the program may be of assistance to the individual and explain any associated processes and procedures.

Disclosure Forms – In order to allow the staff member to speak with the client’s doctors and other existing community supports it may be necessary to have clients sign a consent for the disclosure of information for each service provider. Court support workers should be familiar with the consent policies and procedures of the mental health agencies that employ them. That will allow them to determine the circumstances, if any, where they may rely on the *Personal Health Information Protection Act*, to contact a client’s health care providers or other community supports based on the client’s implied consent. If in doubt, getting a signed consent is always a good idea.

4. Mental Health Diversion

MHCS&S staff shall offer their assistance with Mental Health Diversion (MHD) to eligible clients.

4.1 *Description of Mental Health Diversion*

Diversion is a voluntary, pre-trial procedure where the Crown attorney uses his or her discretion on a case-by-case basis not to prosecute an accused. It is not necessary for the accused to admit guilt of the alleged offence(s). Where the accused is suffering from a mental illness which the Crown believes is the underlying cause of the alleged criminal conduct, the Crown may stay the charge(s) after the accused embarks upon a treatment program which addresses treatment needs and reduces the likelihood of re-offence. In practice in the Toronto region, the accused person generally must show adherence to the plan over time and stability in the community before the Crown will make this disposition and as such, the Crown does not usually divert directly from custody. The Crown's policy and procedures with respect to the diversion of mentally ill persons are explained in the Crown Policy for Diversion of Mentally Disordered/Developmentally Disordered Accused (March 21, 2005 version).

4.2 *Criteria for MHD*

1. The individual is suffering from a serious mental health impairment such as schizophrenia, bipolar affective disorder or major depression. However, this does not necessarily preclude diversion for individuals who have been diagnosed with other disorders.
2. The individual has been charged with a relatively minor offence. These types of charges usually fall into the Class I and Class II offences, but Class III charges are also considered on a case-by-case basis (see Crown Policy Manual for list of offences by class).
3. The individual and the MHCS&S staff member must agree to work together toward mental health diversion. Mental health diversion is a voluntary program and at any time in the process, the individual may choose to proceed through the conventional criminal justice system. Furthermore, as per **Section 2.3.2** of this document, staff members have discretion about who is an appropriate referral for the services.
4. Where a plea of guilt has been entered, mental health diversion cannot be completed.
5. The individual must be out-of-custody.

Please Note: The Crown attorney makes the final decision about mental health diversion. If the Crown feels the case is appropriate he or she has the discretion to withdraw, institute a peace bond or stay the charges. (Please see **Section 4.5** for a detailed description of outcomes). In some courthouses there is a designated mental health Crown or team leader that deals with all diversion cases. In other courthouses any Crown that is involved in that particular case makes the decision about diversion. Mental Health Diversion can occur with the Crown's approval even in the absence of support from the MHCS&S program.

4.3 Admission Procedure

Individuals who meet the criteria for MHD are eligible for admission.

4.4 Diversion Process

1. It is sometimes helpful, but not necessary to have an initial discussion with the appropriate Crown attorney about a client's eligibility for mental health diversion. At this point the Crown may endorse the brief "potential mental health diversion" and will wait and see how the individual does following their treatment plan.
2. In certain circumstances the Crown may wish to have input from the officer in charge (OIC) or the victim witness assistance program involved with the case to assist them in making a decision about diversion. The MHCS&S staff member may at their discretion, agree to assist the Crown and speak to the appropriate persons involved with the case. The Crown typically looks for this input when the charge is an assault, threat or criminal harassment. The goal is to receive input from the complainant about an appropriate resolution to the case. The Crown still has the final say in the outcome of the charge.
3. It is helpful to obtain the appropriate documentation from community supports to assist the Crown with their decision about MHD. The nature of the required documentation may vary from courthouse to courthouse and from case to case.

Examples of appropriate documentation include:

- letter from psychiatrist or family physician stating the diagnosis, treatment plan, prognosis and whether in their opinion they feel the individual's mental illness was connected to the offence (see **Appendix 3**);
- letter from case management program stating the type of support they provide;
- letter from supportive housing staff;
- letter from bail program supervisor, if individual was involved with bail program;

- letter from any other community supports with whom the individual is involved.
4. Each case is different. Sometimes an individual may not require much assistance in terms of referrals or support. The Crown may resolve the matter immediately or request a letter of support and resolve the matter a few weeks later. At other times an individual may have more serious charges and/or may have few family or social supports (including housing, health, financial etc). A situation like this may take quite some time to resolve. In this situation the MHCS&S staff member and/or Case Manager will continue to work with the client in an attempt to establish appropriate community supports. The case will continue to be adjourned during this time. Cases can sometimes be adjourned for a year or more before being approved for diversion. Some courthouses require a specific amount of time to pass before finalizing diversion.

4.5 Possible Diversion Outcomes

1. **Stay of Proceedings:** The Crown attorney has the discretion to stay the charge(s). This involves a suspension of the court proceedings. For up to one year, the Crown may lift the stay and re-institute the proceedings. After one year the matter is stayed permanently.
2. **Withdrawal:** The Crown attorney has the discretion to withdraw the charge(s) against the individual. A withdrawal means that the prosecution is ended.
3. **Peace Bond:** The Crown attorney has the discretion to impose a peace bond, which is a court order requiring the person to whom it is directed (defendant) to keep the peace and be of good behaviour. There are two kinds of peace bonds. One is a common law power and the other, also known as a "Recognizance to Keep the Peace" is found in section 810 of the *Criminal Code*. The Crown attorney has the discretion to ask the Court to impose a common law peace bond and dismiss the original charges in favour of the peace bond. The Crown can also, alternatively, institute a new and separate peace bond application under section 810 of the *Criminal Code*, in which case the accused would agree to enter the 810 peace bond and the Crown would agree, in return, to withdraw the original charges. Peace bonds are usually used in situations where there is an identifiable victim of the alleged offence (such as minor assaults, harassment or threatening). A peace bond order always tells the accused person to "keep the peace" but may also impose conditions on the individual, such as not to communicate with an identified person (e.g., a victim) for a maximum of one year. If the peace bond conditions are broken the police can be notified and legal action taken.

None of the 3 above dispositions results in a criminal record, although for a stay and a peace bond that result is not finalized until the passage of one year or the duration of the peace bond.

4.6 Discharge Process

Once a client's charges have been officially diverted, the MHCS&S staff member may proceed with discharging the client. However, depending on the client's circumstances, the MHCS&S staff member and the client may choose to continue service provision as consultation or case management.

5 Consultation

MHCS&S staff shall provide consultation services to eligible clients.

5.1 Description of Consultation Services

Each mental health court support and services site offers a broad range of consultation services. A consultation refers to any service that the program provides that is not related to a diversion matter or case management service. Consultations may be provided to an accused, Crown, defence or duty counsel, the judiciary or other court personnel, family member of the accused person or a service provider.

5.2 Criteria for Consultation

Individuals who meet the target population criteria for the program and/or their lawyers, family/friends, service providers or other court personnel are eligible to receive consultation services.

5.3 Admission Procedure

Clients requesting a “one time only” type of service (such as questions about court proceedings, information/referral for community supports, etc.) do not require a formal admission, but an Intake Form should be completed with as much information as is available at the time. This ensures proper accounting for program volumes and basic demographics.

Clients who require more support, defined as anything greater than one time contact, should proceed through the Intake Process outlined in **Section 3**. An Intake Form will be completed as part of this process.

5.4 Range of Consultation Services

Brief, One-Time Only – The MHCS&S Program is a resource for information and referral. Individuals, their families or friends, lawyers (for the accused and Crown), and case managers or other community workers may drop-in with some questions about services, court procedures, consumer issues, mental health services, the mental health system and options available to someone who has been arrested and suffers from some type of mental impairment. Staff members should try to make themselves available for these brief consults when possible.

Ongoing – Individuals, their families or friends, lawyers (for the accused and Crown) and case managers or other community workers may require more

assistance than a brief, one-time consult can provide. The second level of consultation support is of an ongoing nature that can take various forms:

- 1. General Client Consultation** – Clients who are not eligible for diversion may receive similar services to those proceeding through the mental health diversion stream, but without the potential outcome of having charges formally diverted.
- 2. Bail Release Plan** – MHCS&S staff may assist with setting up a bail release plan: a service care plan connecting clients with resources in the community (such as housing, mental health supports such as case management, psychiatric services, and specialized programs with the goal of having them released from custody).
- 3. Sentence Release Plan** – Similar to the bail release plan, but occurring at a different stage in the adjudicative process, MHCS&S staff may develop a service care plan connecting clients with resources in the community (as above) at the time of sentencing or upon their release from jail. By ensuring the client has adequate health, mental health and social supports in the community (if available), the goal of this type of consultation is to reduce and prevent the client's future involvement with the criminal justice system.

With both types of consultations, MHCS&S staff may also provide other forms of support such as providing donated clothing and transit tokens for clients on an ad-hoc basis.

5.5 Discharge Process

Once the consultation is complete, a client should be discharged from the MCS&S Program. The staff member should notify the client that their work together is coming to a close and refer them to other longer-term services (if appropriate). The Intake Information form should be completed with a discharge date and entered into the database.

6. Case Management

MHCS&S staff shall offer limited short-term case management services to eligible clients, time permitting.

6.1 Description of Case Management Services

Case management may be offered to clients after being assessed by the MHCS&S staff member. Some sites have a dedicated case manager available to receive referrals. In these cases, the services provided by the case manager may include accompanying clients to obtain legal aid, a health card and other documents, assisting clients to procure social assistance and to secure housing, assisting clients with activities of daily living, and escorting clients to medical appointments and rehabilitative programs. The case manager may also monitor and encourage the client's compliance with treatment measures. Service care plans are developed and negotiated with the client. The case manager does not assist the client directly with his or her court matter but provides linkage and support to clients who require "hands on" assistance in the community. The case manager remains involved with the client until the client is linked to other services or for as long as assistance is required irrespective of the status of the client's court matter.

MHCS&S staff members who are not dedicated case managers may also provide short-term, limited case management services as needed. However, these staff members should strive to refer the client to longer-term case management services/agencies.

6.2 Criteria for Case Management

Individuals who have a serious mental impairment, have current charges or have been recently convicted by the court, and who require assistance/social support and are not currently well connected with the local mental health system are eligible for case management services. There is no charge severity restriction, however, MHCS&S staff must use their judgment about who are appropriate clients based on personal safety and potential ability of a client to benefit from case management services.

6.3 Admission Procedure

Following the triage process, clients who meet the criteria for case management should have the service explained to them. As with all other components of the MHCS&S Program, this service is voluntary. If the client is interested in participating, a meeting should be set up between the client and case manager, who can then assess the specific needs of the client.

6.4 Discharge Procedure

Clients can continue with case management services even after their court matters are complete. However, if clients have been referred to longer-term case management services, or if the staff member feels the client is no longer benefiting from case management services, the relationship can be terminated. The client should be notified that their official relationship with the program is coming to a close and the Intake Information form should be completed with a discharge date and entered into the database.

7. Fitness to Stand Trial

7.1 Definition of Unfit to Stand Trial

To be found Unfit to Stand Trial, the individual must, on account of mental disorder, be unable to conduct their defence at any stage of the proceedings before a verdict is rendered or to instruct counsel to do so. In particular, the unfit individual will be unable to:

- (1) Understand the nature or object of the proceedings, OR
- (2) Understand the possible consequences of the proceedings, OR
- (3) Communicate with counsel.

This definition can be found in Section 2 of the Criminal Code.

7.2 Procedure

If at any point during the court proceedings, the judge or justice has concerns about an accused person's fitness to stand trial, the court can sign a Form 48 and order a psychiatric assessment for the purposes of fitness. After the accused has been assessed for the purposes of fitness and a psychiatric report generated, he or she will return to court and appear before the judge. The judge makes the final decision about whether the individual is fit to stand trial. It is important to keep in mind that an individual's mental status can fluctuate greatly and can impact on their fitness to stand trial status. The judge can overrule the opinion of the psychiatrist. The accused only needs a rudimentary understanding of the court process to be found fit to stand trial.

If the psychiatrist provides testimony that the individual is fit to stand trial, the court will usually rule as such and the accused person will then proceed with the regular court process. If the psychiatrist testifies that the individual is unfit, or that fitness is unclear, the court has a number of options available to it: (1) the court may order a longer 30 day fitness assessment at a designated hospital; (2) the court may rule that the individual is, or remains unfit to stand trial and order a 60 day treatment order at a designated hospital; (3) the court may have their court matter adjourned to a later date where fitness will once again be assessed or (4) the court may rule that an individual is, or remains unfit to stand trial and send the person to the jurisdiction of the Ontario Review Board. The course of action that is taken varies depending on each situation.

7.3 Court Support Worker's Role

Fitness assessments and any ensuing court orders are the responsibility of the court. The MHCS&S Program is not formally responsible for arranging assessments, gathering documentation or other activities around these assessments.

However, at some sites, the MHCS&S staff member may assist in arranging assessments **at their discretion**. In these cases, the MHCS&S staff member

may screen for fitness concerns, assist in arranging a 30 day fitness assessment or 60 day treatment order, and provide information to the psychiatrist or designated hospital about the client. In these situations, the role of the MHCS&S staff member is only to report what was observed. *Note: This type of assistance does not occur at Court 102.*

8. Policies Affecting the Roles and Responsibilities of Staff

8.1 *Non-Alignment with Crown or Defence Counsel*

Mental health court support and services staff (both mental health court support worker and case manager) *should not* advocate on behalf of an accused person's legal counsel with respect to a court-related matter; nor should the staff member endorse the position of the Crown against an accused person. That is, the worker and case manager should not take sides but rather, should strive to project an image of impartiality and professionalism. It is recognized that remaining non-partisan can be difficult at times. However, the adversarial nature of the legal process means that staff members may be unwittingly "recruited" by Crown or Defence counsel to work at their behest, causing uncomfortable and inappropriate situations – this should be avoided. The staff member's interest follows the Vision and Mission of the Program only (described in **Section 1**).

8.2 *Testifying*

Testifying should be avoided as much as possible. The MHCS&S Program has already established an informal understanding with both the Crown's office and duty counsel that, notwithstanding exceptional circumstances, court support staff are not expert witnesses and are bound by a policy strongly discouraging testifying. In some very extraordinary circumstances court support staff may be called to testify. In such circumstances staff should limit testimony to what they saw or heard and avoid offering opinions with respect to an accused person's mental state, criminal responsibility, dangerousness, propensity to commit an act, suitability for bail, likelihood to re-offend or credibility. It may be necessary to periodically remind legal personnel about the limitations in providing testimony and the MHCS&S policy.

8.3 *Confidentiality and PHIPA rules*

Appropriate steps should be taken to protect individual privacy, and the confidentiality of the client's personal health information.

Clients should also be warned at the outset of service provision that there are limits to confidentiality. Specifically, information and documentation regarding their psychiatric history may be made available to the Crown or the court. All of the information in the client's file is available to his or her defence or duty counsel. Conversely, except where the judge or Crown counsel expressly request information about a client (such as when a decision about mental health diversion is being made), information should not be disclosed. Any information provided to the Crown or the judge should also be given to defence counsel. Information in a client's file should not be given out to any other person including other court personnel or treatment and service providers except with the express

permission of the client (with a consent for disclosure of information form) or under court order for the purpose of assessment or treatment orders. The only other exceptions are where there is legal authority to share personal health information under the *Personal Health Information Protection Act (PHIPA)*.

When PHIPA came into force on November 1, 2004, it amended the access and disclosure sections of the *Mental Health Act*. One effect of these amendments is that the Form 14 is no longer a valid form. In practice, the Ministry of Health and Long-Term Care and other health information custodians under PHIPA have created their own forms to govern consents for the disclosure of information. If you previously used a form called a Form 14, you should stop using it immediately. While you do not need to go back to your clients to obtain new consents, you should check with your agency to see whether it has adopted a new form, otherwise, one is attached for your use (See **Appendix 4**). You should file any copies of written consents in the client's service care plan.

PHIPA creates one set of rules for the collection, use and disclosure of personal health information by health information custodians such as physicians, public hospitals, psychiatric facilities and community mental health agencies. Court support workers are considered "agents" of a health information custodian under PHIPA.

As a result of PHIPA, many mental health agencies have revised their policies and procedures relating to the protection of client information and how clients' personal health information is shared. You should be familiar with your agency's policies and procedures. These may have an impact in a number of areas, including:

- the safeguards you must have in place to protect your client's personal health information
- how to report if the personal health information you hold about a client is lost, stolen or subject to unauthorized access
- when you will obtain express consent to give their information to someone else
- when you will rely on an implied consent
- when consent is not necessary
- how you will respond to a client's request for access to or correction of any records of personal health information you hold
- whom to contact within your agency if you have questions

8.4 Mandatory and Discretionary Reporting

- 1) There are a number of other circumstances where MHCS&S staff members may be legally required to report certain information to the appropriate authorities (for example, to public health authorities under the *Health Protection and Promotion Act*). The most relevant example in the

context of community mental health may be where the staff member has reasonable grounds to believe that a child is or may be suffering or may have suffered abuse or may be in need of protection, the staff member shall immediately report the suspicion and the information upon which it is based to the Children's Aid Society. (*Based on the Child and Family Services Act, Section 72. (1)*) You should be aware that a "child in need of protection" does not include an unborn child.

- 2) From time to time, a court support staff member may witness an individual making threats of violence directed to him or herself, or to another person or group of people. Under the *Personal Health Information Protection Act*, health information custodians (such as a mental health agency) and their agents (including court support workers) are permitted to disclose personal health information where the disclosure is necessary to eliminate or reduce a significant risk of serious bodily harm. Staff members should be familiar with agency policies and procedures on when this discretion should be exercised.

There are also rules under the common law (through various court cases) which suggest that there is a duty to immediately report significant threats of harm to police and in appropriate circumstances, any potential victims. Generally, the standard for reporting a threat is when the threat is directed at a person or group, when the individual identifies a specific plan that is concrete and capable of commission and where the method is available to the person making the threat.

As a general rule, the potential victim should be notified. Police should be informed of whether the staff member will notify the victim and if not, why it is not possible or appropriate to do so. Where the accused is in custody, the staff member will also notify the Crown and defence counsel of the threat.

Where appropriate in the circumstances, this notification should be in writing so that it can be placed in the Crown's brief and remain available to any Crown dealing with the case. A copy of the notification should be kept in the client's service care plan.

Where appropriate (i.e., where the court support worker believes that the person's threat is tied to his or her mental illness), the staff member should also attend at the office of the Justice of the Peace and seek an Order for Examination (Form 2 of Mental Health Act).

- 3) Where court support staff are witness to an individual who makes a threat of self harm that if carried out would likely cause serious harm to him or herself, the staff member or case manager should attend at the office of the Justice of the Peace to obtain an Order for Examination (Form 2).

Where the staff member concludes that the risk of harm would make it dangerous to delay immediate intervention, the staff member should notify the police officer stationed at the court of the threat. If the staff member is in the community when such a threat occurs, he or she should contact police (911) and inform them of the situation. Generally, the standard for reporting threats of self-harm to a Justice of the Peace are met if the individual identifies a specific plan of self-harm, the means are readily available and it appears more likely than not that the plan will be carried out. Any threats of self harm made by a client as well as the actions taken by the staff member in response should be documented.

Again, the *Personal Health Information Protection Act* permits health information custodians (such as a mental health agency) and their agents (including court support workers) to disclose personal health information where the disclosure is necessary to eliminate or reduce a significant risk of serious bodily harm. Staff members should be familiar with their own agency's policies and procedures.

In all cases, MHCS&S staff members must use their best judgment to determine whether the threat, behaviour or circumstances are serious. If unsure, it is best to consult fellow staff members, and/or your program manager. It may be helpful to discuss potential scenarios in advance of them occurring. It is also important to inform clients about your discretion (and in some cases, obligation) to report any serious threat. The staff member must also consider:

- the governing agency policy concerning this issue, if any
- the professional obligations of the staff member, including any standards of practice of the regulatory body that governs his or her regulated health profession (such as the College of Physicians and Surgeons or College of Psychologists), or under the *Personal Health Information Protection Act*, the discretion to **disclose personal health information if there are reasonable grounds to believe that the disclosure is necessary to eliminate or reduce a significant risk of serious bodily harm to the individual or others**

8.5 Bail and Probation Orders

The nature of the MHCS&S Program is voluntary and as such, a staff member cannot be named in a bail or probation order requiring a client to be involved with the program over time.

If you are mentioned on a bail order you should request that the bail order be varied so that you are not a part of the conditions. If you are named on a probation order you can contact the probation officer and request that the probation order be varied.

9 Monitoring and Recording

9.1 Team Meetings

Team meetings will be held on a regular basis in accordance with the needs at each courthouse. Topics such as: system/program concerns, complex client cases, new developments, or changes to regulations or policies can be discussed at these meetings.

9.2 Case Notes

Staff members will document information regarding client contact or work supporting a client on a standard Progress Notes sheet (see **Appendix 5**). These sheets will be included with other information in the client file.

9.3 Education & Training

9.3.1 Staff Education & Training

Staff members will endeavour to stay current on issues surrounding mental impairment and the law. Staff will also seek out learning opportunities and advocate for resources to attend workshops, conferences, information sessions, etc.

9.3.2 Education of Others

Part of the role of the MHCS&S Program is to bridge gaps between the mental health and criminal justice systems. As such, staff members should endeavour to share their knowledge and experiences with court personnel, community partners, police, and other interested parties as much as possible without compromising their role as front line MHCS&S workers. Staff members should also endeavour to promote awareness of the Program's services to the general public. These activities shall be undertaken on an ongoing basis.

9.3.3 Data collection

Each agency providing Mental Health Court Support and Services in the City of Toronto shares a common data collection instrument known as the "Intake Information" form (see **Appendix 2** for Intake Information form and see **Appendix 6** for definitions of items on Intake Information form).

MHC&S staff members must fill out an Intake Information form for each client they serve, regardless of the type of service provided. This is normally done once the client's file has been closed, but can be started as soon as the intake process is complete. The information on the form can be completed electronically, or on paper and entered at a later time by either the staff member or by a designated administrative staff person at their agency.

10. Position Description

10.1 Mental Health Court Support & Services Worker (MHCS&SW)

The Mental Health Court Support Worker provides health care services to mentally ill individuals who are in conflict with the law. The Worker assists with the process of Mental Health Diversion, develops service care plans, provides consultation to individuals and links them to mental health services in the community. Consultation and support is also provided to family members and friends, legal personnel, health/mental health service providers, and the greater community.

10.2 Accountability/Reporting Relationships

MHCS&S Workers should report to the manager of their site as designated by their home agency, which is a member of the Mental Health Court Support and Services Consortium.

11 Safety, Risk Management Guidelines & Complaints Procedure

11.1 Personal Safety

Staff are governed first by their home agency policies and procedures regarding personal safety.

Staff are required to report any environmental hazards, disruptions to heating or cooling, and equipment repairs to the building manager as well as the program manager.

If staff become concerned about their personal safety in relation to a specific client or referral source, they should endeavour to have another person present during any interaction with the individual who is a perceived risk; terminate the relationship with that individual as soon as possible; and report their concerns to their manager. As noted in **Section 2.3.2**, staff are not required to accept a referral, or continue to provide services to an individual, if they feel their personal safety is at risk.

If staff are threatened directly, or perceive they are under a significant threat of serious bodily harm, they may contact police and report the incident. Staff should also inform their manager as soon as possible in the circumstances. Options for psychiatric assessment under the Mental Health Act should also be discussed.

11.2 Client Safety

Staff are governed first by their home agency policies and procedures regarding client safety.

Staff should endeavour to ensure their client's safety as much as possible. Should a risk to the client's personal safety become known to the MHCS&S staff member, the staff member should discuss this concern with the client and other appropriate supports (with the client's permission). In extreme situations, the staff member should report their concern to the appropriate authorities and inform their manager of their concern.

11.3 Minimizing Community Risk

Staff are governed first by their home agency policies and procedures regarding the minimization of community risk.

Should a staff member become concerned about significant risk to the community due to a client's behaviour, and feel this risk is credible, the staff member should immediately report their concern to their program manager and discuss possible courses of action. These actions may include obtaining a Form

2 under the Mental Health Act from a Justice of the Peace; reporting concerns to the police; and/or informing specific individuals who may be at risk where the client has made a specific threat to another. Other options include reporting concerns to the client's bail supervisor, probation officer or physician where the requisite consent to disclosure forms (where appropriate) have been signed by the client.

Please also see **Section 8.4** of this document for specific instances where staff members have the discretion or are required to report their concerns to the appropriate authorities.

11.4 Minimizing Risk in Courthouse Environment

MCHS&S staff members should notify the head of courthouse security immediately if they have a concern or feel that they, or others, are at risk of personal harm from *anyone* in the courthouse.

12. Glossary of Terms

Absolute Discharge: A court decision made when, in the best interests of the accused and not contrary to the public interest, a person who has been found guilty of, or pleads guilty to, an offence under the Criminal Code, is relieved from sentencing by that Court, without conditions. The offender has no record of a criminal *conviction* or “no criminal record” for employment purposes. The offender does have a record of a *finding of guilt*.

Accused: A person who is charged with a criminal offence; the defendant in a criminal action.

Adjournment: The postponement of a hearing or court sitting, usually because the scheduled proceedings were not completed or ready to commence.

Adult Detention: The temporary care of adults in physically restricted facilities usually referred to as jails, detention centres or lockups, pending court disposition or transfer to another jurisdiction or agency.

Alias: An assumed name.

Arrest: The act of restraining, seizing, or physically detaining a person by legal authority.

Arrest Warrant: The document signed by a Judge or a Justice of the Peace, authorizing those to whom it is addressed to apprehend a person and bring that person before a Justice of the Peace.

Bail: Under Canadian law, with a few exceptions (e.g., murder), there is a presumption that an accused should be given some form of pre-trial release unless it can be established that his or her detention until trial is necessary. There are various forms of release available. “Bail” refers to the form of release in which an amount of contingent debt is pledged by the accused as a condition of release pending trial (his or her “own bail”), or by his or her “surety” (a “surety bail”) or, in some limited circumstances, the accused must make a cash deposit (“cash bail”). In the vast majority of situations, however, bail refers to the first two situations, in which a legally binding pledge is made to pay the Crown a sum of money (the bail amount) only if and when the terms of the release are violated. In a surety bail the surety makes the pledge and owes the Crown the bail amount in the event that the accused does not comply with the Court’s terms of release.

Bail Hearing: An appearance before a Justice of the Peace or Provincial Judge to determine if conditions exist for a prisoner’s conditional release pending trial, and, if so, what those conditions are.

Bail Review/Bail DeNovo: An appeal over an error in the decision at the bail hearing; taken to the Supreme Court or a County Court regarding bail granted or refused by a lower Court.

Bail Verification: Investigation and confirmation of factual information about an accused person's community status, in preparation for a bail hearing.

Bail Violation: A violation of a term of bail that may include the neglect of an undertaking, recognizance summons appearance notice, or a promise to appear.

Bench Warrant: A warrant ordered by the Court concerning the non-appearance of an accused person or witness in Court, which authorizes the subject's immediate arrest. (see also "Discretionary Bench Warrant")

Case Management: Model of service delivery for mentally ill individuals. The case manager is community based, focuses on the client's needs, and follows this individual usually on a long-term basis.

Charge/Count: The formal accusation against a person states that he or she has committed a specific offence.

Community Programs: Programs that have been developed, usually by a government Ministry or Agency, that provide opportunities for the supervision of offenders in the community.

Community Service Order: An alternative to imprisonment whereby an offender is required to perform a prescribed number of hours of community work within a prescribed time, as a condition of a probation order.

Concurrent Sentence: A sentence that allows the convicted prisoner the privilege of simultaneously serving two or more sentences; the length of sentence being determined by the latest expiry date of the sentence imposed.

Conditional Discharge: A court decision that, in the best interest of the accused and not contrary to the public interest, a person who is found guilty or pleads guilty under the Criminal Code may be discharged by the Court on certain terms and conditions as set forth in a probation order, rather than having a conviction registered against them. Upon successful completion of the probation the offender has the same status as someone absolutely discharged (see above).

Conditional Sentence: The offender serves his sentence or imprisonment in the community. Typically the person is to remain at home and is only allowed to leave his or her home for limited specified purposes.

Conditions of Probation: The qualifications imposed on an individual by a probation order, requiring the performance of or abstention from specified actions.

Conviction: The formal recording of guilt and liability to sentencing after trial by a properly constituted court. A convicted person has a criminal record.

Court, Ontario Superior Court of Justice A court of criminal and civil jurisdiction presided over by a county or district Judge appointed by the Governor in Council (i.e. the Federal Cabinet). It has the authority to try an indictable offence other than those enumerated in the Criminal Code of Canada as being solely within the jurisdiction of another court. Trials can be with or without a jury in accordance with the Criminal Code.

Court, Ontario Court of Justice The lower, provincially appointed Court, which hears criminal proceedings, proceedings under the Youth Criminal Justice Act and certain matters under the Family Law Reform Act and other Provincial statutes.

CPIC: The Canadian Police Information Centre is a computerized police information and records system designed and operated for the police community. Keeps records of, among other things, convictions, discharges and acquittals

Criminal Code: Federal legislation; passed by the Parliament of Canada, with respect to the criminal law of Canada. This legislation sets out the duties and responsibilities of the courts and their officers, stipulated offences and penalties, sets appeal procedures and legal jurisdiction.

Criminal Record: A judicial record of conviction. A register of crimes maintained by the R.C.M.P. in Ottawa on persons convicted of offences.

Crown Attorney: A member of the Ontario Bar appointed by the Attorney General to aid in the administration of justice in the county or judicial district for which the Attorney is named. Specifically examining allegations or wrongdoing, conducting preliminary hearings and prosecutions for indictable and summary conviction offences and attending to all duties of Crown Attorneys under the laws in force in Ontario.

Crown Brief (or “Dope Sheet”): The Crown brief contains all the information about an individual’s particular charge(s). In the brief will be a copy of the police synopsis, criminal record, a copy of the police notes, and any evidence such as videotapes.

Defence Counsel: The attorney who represents an accused person.

Discharge: The court order by which a person held to answer a criminal charge is set free. In the Ministry of Correctional Services the act of releasing an inmate from custody upon satisfying the terms of imprisonment.

Discharge Possible Date: An inmate will be discharged if he or she serves all time in custody without parole but minus his or her remissions at this date.

Discretionary Bench Warrant (or “Bench Warrant With Discretion). This is a bench warrant that will not be executed unless the accused person fails to attend on the next court date, or if it's extended, on a later one. Commonly used in cases where mental health is of concern. A warrant is necessary to avoid the court losing jurisdiction over the accused, however it is understood that the arrest should not actually take place if the accused shows up the next date.

Disposition: Court outcome of charge.

Duty Counsel: An attorney appointed by legal aid to represent individuals at the Provincial Court level in both criminal and family divisions. In the criminal courts, they can assist individuals (free of charge) with bail hearings, guilty pleas, set dates, and general legal advice.

Fingerprint Classification (“FPS #”): A system of classifying fingerprints according to patterns in the friction edges on the fingers. NOTE: Any person charged with or convicted of an indictable offence may be fingerprinted and photographed in accordance with the Identification of a Criminal Act. Once on file, a person's fingerprints are assigned an FPS number that appears on subsequent police reports.

Indictable Offence: Those offences that are labelled as such by the Criminal Code or other Federal statutes. These are subject to more serious penalties than summary conviction offences. The accused also has the right of election of how he will be tried – by a judge without a jury, or a court composed of a judge and jury. However, for certain offences, the Ontario Court of Justice has ‘absolute jurisdiction’ – i.e. the jurisdiction of the Ontario Court of Justice to try the accused does not depend upon the consent of the accused.

Information: The written allegation or charging document, under oath, in which a person (usually, a police officer) alleges that another individual has committed one or more offences.

Jurisdiction: The limits of authority of a criminal justice agency. For a law enforcement agency, the jurisdiction defines the legal boundaries of operation that generally coincide with political boundaries, such as the limits of a city, and with the types of cases for which it assumes responsibility. The same basic description applies to courts.

Keep the Peace: To maintain quiet and harmless behaviour toward the sovereign, her Government and her people, and to prevent or dissuade others from breaking the peace.

Legal Aid: A provincially funded service for those who need assistance from a lawyer. Legal Aid is available for those with low income and negligible assets. The service is free or contributory in nature, when financial eligibility is determined. Eligible accused get a *Legal Aid Certificate* from Legal Aid Ontario to take to a lawyer. If the lawyer accepts the certificate he or she is then paid directly by Legal Aid Ontario.

Mental Health Court Support Worker (MHCSW): A mental health professional who is court based to offer assistance and support to mentally ill accused, their families & friends and lawyers.

Mental Health Diversion: Diversion is a voluntary, pre-trial procedure where the Crown attorney uses his or her discretion on a case-by-case basis not to prosecute an accused. It is not necessary for the accused to admit guilt of the alleged offence(s). Where the accused is suffering from a mental illness which the Crown believes is the underlying cause of the alleged criminal conduct, the Crown may stay the charge(s) after the accused embarks upon a treatment program which addresses treatment needs and reduces the likelihood of re-offence.

Oath/Affirmation: A religious or solemn affirmation to tell the truth or to take a certain action.

Occurrence: An incident or event reported to the police and recorded by them; in the Ministry of Correctional Services, any significant but otherwise unclassified happening which requires its reporting to senior officials.

Offence: A punishable breach of law.

Officer-In-Charge (OIC): Most cases before the court have been assigned to an Officer-in-Charge. The OIC is usually a detective and will deal with the case in court and communicate with the victim and Crown attorney. [This is to be distinguished from the “officer-in-charge” as defined by the Mental Health Act, who is the most senior administrator of a psychiatric facility.]

Outstanding Charges: Accusations before a Court that have not received a formal disposition and are thus pending.

Pardon: The Crown’s full or partial exemption of an offender from the punishment prescribed for an offence and from the disabilities consequent to conviction. Upon recommendation of the National Parole Board, the Governor in Council (i.e., federal Cabinet) may grant a pardon to any individual, which

removes a particular offence from any criminal records in the custody of federal agencies. Broadly available but not until a prescribed period of time after the full completion of the sentence.

Parole: Parole is a means of releasing an offender to serve the remaining portion of his or her sentence in the community under supervision.

Parolee: An offender released from custody to serve the remainder of the sentence in the community, bound by the conditions of a parole certificate.

Peace Bond: The Crown attorney has the discretion to impose a peace bond, which is a court order requiring the person to whom it is directed (defendant) to keep the peace and be of good behaviour. In minor assault cases, or other cases where there is an identifiable victim, the Crown might withdraw the charge upon the accused. A peace bond may be issued under section 810 of the Criminal Code or under the court's common law jurisdiction to bind a party over to keep the peace.

Under the Criminal Code, any person who fears on reasonable grounds that another person will hurt him or her, or his or her spouse or child, or damage his or her property can apply to a justice to have that person enter a peace bond. If the court is satisfied there are reasonable grounds for the applicant's fear, it will order the defendant to enter a recognizance to keep the peace.

A section 810 peace bond can be issued for up to a year; a common law peace bond for longer. Refusal to sign a section 810 bond can result in imprisonment for up to 12 months. Once entered, it is a criminal offence to violate the conditions of a section 810 peace bond. However, signing a peace bond or recognizance does not give rise to a criminal record.

Peace Officer: Any police officer, mayor, sheriff, bailiff and others by virtue of their office.

Perjury: A wilful act of false testimony while under oath.

Police Synopsis: A description of an alleged offence authored usually by the arresting officer.

Preliminary Inquiry: The proceeding at which the Crown must present its evidence against an accused in order to show that it has a tenable case that warrants proceeding to trial. It is presided over by a trial court judge.

Probation: Court order that releases a convicted person under supervision and with direction to obey certain conditions.

Recognizance: Either (A) An obligation of record that is entered into before a court, containing a condition to perform a particular act, such as making a court appearance, or (B) A sum of money pledged to assure the performance of such an act.

Registrar: Clerk of the court or court administrator.

Remand (Adjournment): Postponement of proceedings to allow for the gathering of evidence or retaining legal counsel. Remand refers to individuals in-custody and adjournment refers to individuals out of custody.

Serve: To deliver notice.

Sheriff: Representative of the Court.

Special Duty Counsel: Defence lawyers appointed by Legal Aid Ontario to represent mentally ill accused/offenders.

Stay of Proceedings: A suspension of the court proceedings. For up to one year, the Crown may lift the stay and re-institute the proceedings. After one year the matter is stayed permanently.

Summary Conviction Offence: A less serious offence usually carrying a penalty of no more than six months imprisonment, or a maximum fine of \$500 or both. Some legislation sets out other penalties.

Summons: Legal document ordering the appearance in court of an accused person.

Subpoena: A summons ordering a person to appear in court to testify or produce a document.

Suspended Sentence: Judge's order that the sentence given a guilty person needs not be imposed, provided that the accused meets certain conditions set by the court. If the accused does not meet the conditions, the Judge can pass sentence on the initial charge. A new charge may be laid for breaking the suspended sentence as well.

Terms of Release: Conditions under which an accused person is to abide after release. Non-compliance with the terms can result in additional charges and or re-arrest.

Testimony: Any verbal evidence given. An assertion of fact, opinion, belief or knowledge, material or not, admissible or not, given in court for a hearing.

Tort: A civil wrong caused by an act or an omission, a violation for which an injured party may sue.

Voir Dire: Trial within a trial to determine an internal trial issue such as, for example, the admissibility of certain evidence.

Warrant: Court order giving legal authority to arrest a person.

Withdrawal: When charges against an accused are withdrawn, no further legal action will be taken against the accused on that matter.

Without Reasonable Cause: The act of knowingly refusing to follow a condition or conditions in a probation order.

Witness: A person having evidence that is relevant to a particular matter.

**13.1 Court Specific Section
College Park Courthouse**

College Park Courthouse (COVERING CENTRAL TORONTO AND IN-CUSTODY WOMEN)

Ontario Court of Justice: College Park
Mental Health Court Support and Services Program
44 Yonge St, Room 265
Toronto, ON
M5B 2H7
Tel: 416.598.8103
Fax: 416.598.3495

Mental Health Court Support and Services Contact Information

Mental Health Court Support Staff (CRCT):

Fasika Cherinet: 416.598.8108 fcherinet@crct.org
Wyll River: 416.598.8103 wriver@crct.org
Fax: 416.598.3495

Program Manager (CRCT):

Darlene Miner 416.482.4103 x304

BUILDING ACCESS

Hours: – The entrance to the courthouse is through the College Park Mall, take the elevator to the second floor. An ID badge can be obtained through the ID office at Old City Hall. The hours of operation are 9:00am-5:00pm.

OFFICE ORIENTATION

To Order Office Supplies:

Contact the CRCT office manager at x248

Photocopying:

There is a photocopier available in the court support workers' office.

Procedures for Locking Up/Unlocking Office:

The door locks behind person as they leave. Only CRCT court support staff and the College Park manager of operations is to have a key.

To Access Phone Messages :

The phones are equipped with Bell Call Answer. The mental health court support services manager will orient staff to the system.

KEY PEOPLE IN COURTHOUSE

Duty counsel: 416 598 1260
Crown's office: 416 325 8994
Manager of Operations: 416 326 7919
Judges' Secretary: 416 325 8972
Cells Male: 416 808 5645
Cells Female: 416 808 5629
Cell Supervisor: 416 808 5647
Victim Witness: 416 325 6117
Bail Program: 416 314 9227
Justice of the Peace Office: 416 325 8967

COURTROOMS & OFFICES

Courtroom 501: Bail court
Courtroom 503: Plea court
Courtroom 505: Set date court
Courtroom 507: Bail court for females only on Friday

SPECIFIC PROCEDURES

Staff are asked to assist in release plans for in custody persons. Referral may come from duty counsel, defence counsel or Crown. The release plan should include where the person can go to stay upon release. If the person is homeless this would then require the staff to secure a shelter bed. Staff should also include in the release plan whether or not the person has any community supports and/or mental health follow up. In a best case scenario getting a consent for the disclosure of information signed and contacting these supports to confirm information is helpful. Staff will interview person in cell area. At the time

of assisting with the release plan the staff may decide the individual is a good candidate for mental health diversion. The program will be explained and when the person is released on bail she can return to meet with staff to complete an intake and begin the diversion process.

Staff will also get a number of out of custody referrals either from defence lawyers, community workers, families, or self referral. The staff will meet with the parties and gather information about the situation. Staff will inform the parties about the program and discuss the individual's eligibility. If it seems the person is a candidate for diversion an intake will be completed.

There is no psychiatrist at College Park currently. It is hoped that someone will be made available in the near future. No fitness assessments are done at College Park nor are any booking of hospital beds. If the court thinks there are fitness concerns the individual is traversed to 102 Court likewise at this point a bed would be booked from 102 Court should the individual be found unfit. In doing release plans mental health court support staff may feel there are fitness concerns. Staff should convey these concerns to duty counsel or the defence counsel where upon fitness should be canvassed in the court.

TTC: Staff may give out TTC to clients. There is a monthly allotment of tokens.

Clothing: A small amount of clothing is available for clients in need.

Safety and Risk Management

- There is a panic button in the office to the right of 501 Court.

If there are any concerns regarding the office i.e. air quality or any other maintenance issues contact the manager of operations for the College Park Court House.

**13.2 Court Specific Section
Etobicoke Courthouse**

ETOBICOKE COURT (COVERING ETOBICOKE AND WEST TORONTO REGION)

Ontario Court of Justice: Metro West
Mental Health Court Support and Services Program
2201 Finch Avenue West
Toronto, ON
M9M 2Y9
Tel: 416.314-3384 and 416.314-3408
Fax: 416.314-5765

Mental Health Court Support and Services Contact Information

Mental Health Court Support Staff (CMHA):

Sandra D'Elia Cristino, court support worker scristino@cmha-toronto.net	416-314-3408
Wayne Doyle, case manager wdoyle@cmha-toronto.net	416-314-3384
Mary Jane Ellis, court support worker mjellis@cmha-toronto.net	416-314-3384
Leann Gallant, court support worker lgallant@cmha-toronto.net	416-314-3408
Kristin Sim, case manager ksim@cmha-toronto.net	416-314-3384

Program Manager (CMHA):

Frank Sirotych: 416-289-6285x286
fsirotych@cmha-toronto.net

BUILDING ACCESS

Building Hours: 8:30am – 5pm

All visitors use main entrance. Exits are through the two blue turn-style doors only.

All Ministry of the Attorney General employees receive access cards to stairwells. We do not have cards and therefore must use the elevators only.

Cells are open for interviews with clients during the day. They are closed from 1-2pm for the lunch hour.

OFFICE ORIENTATION

To Order Office Supplies:

For office supplies, please make request to Roxanne Huneault at CMHA office
Tel: 416-789-7957/222.

Photocopying:

Small photocopying jobs may be done in our office through the fax machine. For big photocopy jobs, please go to the front administration office or ask Duty Counsel or Bail program.

Procedures for Locking Up/Unlocking Office:

Please lock the file cabinets, shut down computer, turn out lights and ensure doors are locked. Please do not leave open files on the desks at night.

To Access Phone Messages:

To check your phone messages: press 4, your extension number, 4, and your password.

KEY PEOPLE IN COURTHOUSE

Head Justice:	Judge Derek Hogg	416.314-3975
Chief Crown Attorney:	Sarah Welch	416.314-3936
Duty Counsels:		416.597-5890
Cell Supervisor:		416.808-2740
Booker:		416.808-2726
Courts Administration, Manager:		416.314-3967
Victim Witness Assistance Program (VWAP):		416.314-3944
Adult Diversion office:		416.314-3673
Salvation Army:		416.314-7260
Justice of the Peace:		416.314-6247
Probation Phase I:		416.314-2418
Probation Phase II:		416.314-0156
Youth Court Action Program (YCAP) -with Operation Springboard		416.618-5415

COURTROOMS & OFFICES

- 202 Set date
- 204 Domestic matters
- 205 Youth court
- 207 Plea/duty court
- 208 Bail court
 - Trial courts 201, 203 (pre-trial room),
 - 206, 209, 210, 211 (child friendly court)

SPECIFIC PROCEDURES

SEC. 34 Assessments of YCJA (phase I and II): In and out of custody

Meet with the client to complete referral form for section 34 assessment. Explain the limits of confidentiality. Make a photocopy of the order and fax to appropriate clinic, along with the referral form, synopses, CPIC record, victim statements, signed consent to disclosure forms etc. Remand matter 4-6 weeks.

Mental Health Diversion:

Meet with the client to conduct psycho-social assessment. Explain our program to the client, the voluntary nature, and the limits of confidentiality. Ask client to sign any necessary consents for disclosure of information. Devise Diversion plan with the client and explain that we will be communicating/meeting with him/her on a regular basis during the DIV period.

If the client does not have recent documentation from a current Psychiatrist/Physician, please fax form letter which explains the court program, consents for disclosure of information and a program pamphlet to the Psychiatrist. Set a remand date for 2-3 weeks.

If the client has recent documentation, call Psychiatrist to confirm client is under his/her care. Ask the Court Officer in courtroom 202 for the Crown brief. Take the brief to the Resolution Crown for consultation. Present the client's background, relevant psychiatric information and the diversion plan to the Crown. Report back to courtroom 202 and set remand date.

** One week prior to the finalization date, remind client and/or Doctor/community supports for letters confirming that client has participated in Diversion plan.

Consultations for Bail:

The Mental Health Office will assist with release plans for individuals who are in custody and suitable for release (the Worker will consider current charges, criminal history, and current mental health status). Prior to conducting the in-custody assessment, the MH Court Worker should obtain the Crown brief from Bail court (208) and make photocopies of the synopsis, CPIC record, record of arrest, show cause etc. Please return the brief to the Crown ASAP.

The MH Court Worker will assess the client in the cells and devise an appropriate plan with the client. Always remind the client of the limits of confidentiality. ****This must be done each time you meet with a client (in or out of custody). Be sure to explain to the client that the same information will be shared with Defence counsel and the Crown.**

DO NOT enter into a discussion with the client about the offence. Re-focus the client to particular mental health issues, community supports, family supports, plan of release etc.

Report the same information to the Crown and Defence/Duty Counsel.

Arranging Early Return to Court:

If an assessment or treatment order is completed before the client's expected return date to court, the hospital will contact the MH Court Worker. Please inform Duty Crown and Defence Counsel so that they may obtain a Judge's order to bring the individual back to court at an earlier date.

Maplehurst Correctional Institute:

Our office has frequent contact with health units at the detention centres for the purposes of sharing information about a client's medication, current condition, etc.

Tel: 905.878-8141
Health Unit Fax: 905.878-1435

Toronto Youth Assessment Centre (TYAC):

Tel: 416.314-0800
Health Unit: 416.314-0815

**Booking Forensic beds: 30 Day Fitness, NCR Assessments
60 Day Treatment Orders:**

Assessment and Triage Unit (ATU) at Centre for Addiction and Mental Health (CAMH)

Contact: Mary DeSouza 416-535-8501/2936. (Adults)

Contact: Robin Nicholas, Manager 416-535-8501/2967

Penetanguishene Mental Health Centre: Maximum security

They do not give out specific bed dates for assessments or treatment orders. Call Louise Moreau at 1-877-341-4729. Ask Louise to inform detention center when bed is available. Fax Order, synopsis, CPIC record, consent to disclosure forms, and any other relevant information. Remand order for 6-8 weeks.

Consulting Psychiatrist: Dr. Vasu Srinivasan

A consulting Psychiatrist is available Wednesday afternoons for in-custody fitness assessments.

In the morning, ask the Crowns and Duty Counsels in bail and plea court (208 & 207) if they have any referrals for the Psychiatrist. If the Crown refers, please ensure that you have consent of Duty/Defence Counsel. **The MH Court Worker should screen for fitness concerns prior to referring the client to the Doctor.

If fitness concerns are present, advise Duty counsel or defence counsel of the specific nature of the concern. Duty counsel or defence counsel will determine whether a formal fitness assessment is required. Note: A judge or justice of the peace must sign a Form 48 prior to the doctor assessing an individual's fitness to stand trial.

Form 1:

If a Form 1 is issued, call the Cell Supervisor and explain the situation. He/She will call the Police Division. Give original Form to the Arresting Officers and keep a photocopy in the client's file.

Accessing Cells:

Push button, request individual's name and wait for signal to open door. We are only permitted access to interview rooms, not the actual cell area.

If a client needs to sign a consent form for the disclosure of information, ask one of the court officers to give the consent to disclosure form to the client.

TTC tokens:

Please distribute to our clients on an as-need basis, unless there are exceptional circumstances. When there are none left, please purchase at a TTC station and you will be reimbursed on your monthly expense form.

Clothing:

Our office has some clothing. If there is not enough, ask Betty Young of the Salvation Army office.

Safety and Risk Management

Each MH Court worker has a panic button on her/his desk.

For any air quality, heating concerns etc, please contact the Manager of Courts Administration, David Medeiros, in the front Administration office.

**13.3 Court Specific Section
North York Courthouse**

FINCH COURT (COVERING NORTH YORK REGION)

Finch Court
Mental Health Court Support and Services Program
1000 Finch Ave West
Toronto, ON
M3J 2V5
Tel: 416. 667.0933
Fax: 416. 667.1084

Mental Health Court Support and Services Program Contact Information

Mental Health Court Support Staff (COTA):

Enid Somersall 416. 667.0933
Rachel Vance 416. 667.0933

Program Manger (COTA):

Nancy Sidle 416. 785.9230 x182
sidle_n@cotarehab.ca

Building Access

The main entrance is on the east side of the building. There is one exist on the west side leading to the hallway of the highrise building. This exit is only accessible to Crowns, court Security, Victim Witness, Judges, etc. as one needs access cards. There are 3 exists from the main office that head out to the balcony area. One faces east and 2 face to the south. The nearest emergency exit for most people is the main entrance.

ID Badges

ID badges are obtained through COTA

Keys

Keys are obtained from court manager

Hours of Operation

Access to the building begins at 8:30 am. The court operates from 9 am – 5 pm. The cells open until all clients receiving bail are released and other inmates are transported to the various detention centres (cells are often open until 7 pm).

General Office Orientation

To Order Office Supplies:

1. Contact Sandy Banks, COTA Head Office 416.785.9230 x119;
2. Complete registration form and submit to Nancy Sidle for authorization;
3. Volunteer Dieter Schultz can assist with transporting office supplies from COTA to Finch Court

To Access Phone Messages:

Call 416. 210.0667 and key in code 3399
Press (1) to hear messages
Press (4) to replay messages
Press (7) to erase messages
Press (9) to save messages
Press (33) to go to end of message

Procedures for Locking Up/Unlocking Office:

Each MHCS&S worker has a key that is required to unlock the office door.
Close the door at night to lock (no key required)

Key People

Crowns:

- Head Crown** – Mr. Tracey Vogel – approves all clients for possible mental health diversion – the maximum length of diversion once approved is 6 months.
- Other Crowns** – Arrange assessments as to booking (i.e. psychiatric assessments, risk assessments); speak to MHCS&S staff regarding a client in-custody (when appropriate); give copy of the bail release plan (if needed).

Toronto Bail Program:

Carol Walker 416.667.0999
Maggie Filmore 416.667.0999

Duty Counsel:

Sylvie Doiron 416.663-5560 fax: 416.663.3343

We receive most of our referrals from the duty counsel office. We work closely with them regarding inmates that do not have a lawyer or whose counsel did not appear on their behalf. We access the use of Duty Counsel in courtrooms 306, 303 and 301.

Head Judge:

Tony Dizio

Our involvement with most judges is limited. Occasionally, we have meetings with the head judge to provide him with progress updates on the program. Our involvement with most judges occurs in courtroom 303 concerning Form 48, Form 6, Form 8, requests for NCR assessment booking of beds, and we are called in on certain matters if a client is entering a plea and have mental health issues or is linked to our office. We are also involved in assisting Justices of the Peace in courtroom 306 with bail release plans

Psychiatrist:

Dr Zohar Waisman 416.633-9420 x6089 (available only Wednesdays)

Dr Waisman attends every Wednesday. He interviews clients for fitness, testifies in court for treatment orders.

We also access psychiatrists in the community frequently for progress information on client's medication compliance, etc.

Building Maintenance/Janitorial Staff:

Omar 416.990-5349

Building maintenance is contacted when a fuse is blown, etc, but contact is very limited.

We have very little contact with the Janitorial staff, only contacting them if there is a mess that needs to be cleared up.

Court Officers:

Our involvement with court officers is limited. We contact them mainly when we go to the cells to have clients brought to the interviewing area. If a client is in our office and is acting out, they are called as a safety precaution. They are also called for assistance in court for briefs, etc.

Police Divisions:

We are involved mainly with officers who are more closely linked to community mental health. They refer clients, and inform us of any arrest being made of mental health clients. They also return follow-up calls regarding a client's progress.

Hospitals:

CAMH is used often for booking Fitness/Treatment Orders, out-of-custody assessments etc.

We work closely with North York General Hospital – Branson Site Court Support Program. This program accepts referrals from us for psychiatric assessments, anger management, family counseling and other individual counseling.

Other hospitals are used only if the client is admitted there. We will call regarding the client's progress mentally or to obtain information with a signed consent for the disclosure of information. If a client's doctor is hospital-based, then we will contact the doctor there.

Jails/Detention Centre

We will contact them regarding medication, or for a client to be seen by a psychiatrist or for a client to be placed in a special needs unit. We will also call if we are trying to track the whereabouts of a client. The jail sometimes contacts us to inform us of the status of certain clients to be seen on a court date.

Courtrooms

Most Frequently Used Courtrooms:

- 306 Bail Court
- 303 Plea Court
- 301 Set Date Court

Other Courtrooms:

- 302, 307, 305, 304, 308, 309, 310 Trial Courts
- 300 Youth Court (now at 2001 Finch Ave)

Specific Procedures

Mental Health Diversion:

The MHCS&S worker interviews the client and determines if the charge is divertable. Diversion is explained to the client and if the client is in agreement a standard Doctor's Letter with completed consent to the disclosure of information is sent to the client's psychiatrist. Upon receiving the Doctor's letter, we approach Ms. Vogel with the letter and brief which she looks over and then decides to approve the client for diversion. Upon approval the client enters into an approximately 6 month monitoring period by the MHCS&S worker. The period consists of monitoring compliance with the treatment plan, doctors' visits, discussing goals, linking appropriately to support and services and most of all staying free of criminal activity. During the 6 month period the client's matter is adjourned in intervals of 2 months. A client's visits to the office for monitoring depend on the stability of the client's mental health status and their compliance in the community. Visits typically occur monthly or less frequently depending on the individuals needs. At the end of the 6 month period a progress letter is obtained from the doctor and given to Ms. Vogel. If she approves the doctor's letter the matter is then stayed. If she feels much progress is not made the matter will be adjourned to a later date. Approximately 2-3 months with an updated letter.

Tokens:

Tokens are only given to inmates who are released from custody. If a client is really desperate, then a token is given with an explanation.

Safety & Risk Management

Panic Buttons – Installed at each work station in the mental health office.

Concerns about air quality, heating, cooling can be directed to Building Maintenance staff and should simultaneously be reported to the program manager.

Fire Safety, Bomb Threat & Other Emergency Procedures (courthouse-wide). See *attached*.

**13.4 Court Specific Section
Old City Hall Courthouse**

Old City Hall (COVERING CENTRAL TORONTO)

Old City Hall
Mental Health Court Support and Services Program
60 Queen St W, Room 20
Toronto, ON
M5H 2M4
Tel: 416. 364.8394
Fax: 416. 364.3671

Mental Health Court Support and Services Program Contact Information

Mental Health Court Support Staff (CRCT):

Michelle Gabriele 416.364.8394 x 22 mgabriele@crct.org
Rhona Zitney 416.364.8394 x 23 rzitney@crct.org
Rebecca Penn 416.364.8394 x 24 rpenn@crct.org
Janey Cordeiro 416.364.8394 x 25 jcordeiro@crct.org
Jorge Zelaya 416.364.8394 x 26 jzelaya@crct.org
Lisa Allen 416.364.8394 x 27

Program Manger (CRCT):

Darlene Miner 416. 482.4103 x304
dminer@crct.org

Building Access

Entrances: Public entrance on Queen Street
Staff entrance on Albert Street (with proper Old City Hall identification)

ID Badges

ID badges are obtained through the Building Manager, Aldo Bruno with approval from CRCT.

Emergency Exit

See Emergency Procedures manual located in Room 20.

Keys

Each staff member is provided with a key to Room 20 by the Program Manager at CRCT. There are lock codes for staff washrooms and lunchroom which are available in Room 20.

Hours of Operation

General Office Orientation

Photocopy Codes

MHCS&S staff	23822A
Duty Counsel	24824A
Court	99496A

Ordering Office Supplies

Send request for supplies to office manager at CRCT (Sri Sinnathamby). He orders supplies and has them delivered right to MHCS&S office.

Accessing Phone Messages

Phone message can be accessed in 2 ways:

- (1) Press message indicator key and then enter your password.
- (2) Phone 416.326.4040 and follow the prompts.

Messages are checked several times a day. Messages are also checked at the CRCT Head Office by calling 416.482.4177 and following the prompts.

Procedures for Locking Up/Unlocking Office

Each MHCS&S worker has a key to the office. The door needs to be locked at the end of the day by freeing the deadbolt and closing the door firmly. Staff also have keys to the filing cabinets which are to be locked at the end of each day. Computers and the photocopier should also be shut down at the end of the day.

Key People

Crowns:

The Case Management Team responsible for staffing 102 court provide pre-screening for all potential Mental Health Diversions.

Team Leaders – Ultimately approve Mental Health Diversions. They rotate on 6-month intervals. There are 2 team leaders: Jim Atkinson, Rick Bennett and Joanne Capossi (currently).

Domestic Crown – the team leader approves spousal domestic matters. There are 2 team leaders: John Flaherty and Debra Moskovitz (currently).

Federal Crowns – decide drug matters for Mental Health Diversion. Current team leader is Kevin Wilson.

Toronto Bail Program:

Marcelo Ortega, Bail Supervisor	416.314.3765
Mental Health Court	

Duty Counsel:

David Taylor/Russ Brown are special duty counsel for Court 102, and assisted by another duty counsel on a weekly rotating basis.

David Taylor/Russ Brown 416.326.6540

Psychiatrists:

Psychiatrists come from CAMH specifically to do fitness assessments. They are available every afternoon from Monday to Friday beginning at 1 pm.

Building Maintenance/Janitorial Staff:

Building maintenance is located in the room beside Room 20 and can be accessed by knocking on the door. Maintenance and janitorial services are provided by the City of Toronto.

Police Divisions:

Divisions 52, 54, 14 and 11.

Hospitals:

Most 30 Day Fitness Assessments and Treatment Orders occur at the Centre for Addiction and Mental Health, Queen Street location. Our clients also commonly access St. Michael's Hospital for emergency health and psychiatric services.

Jails/Detention Centres:

**Toronto Jail
550 Gerrard Street East
Toronto, ON
M4M 1X6
416-325-8600**

**Toronto West Detention Centre
111 Disco Road
Rexdale, ON
M9W 5L6
416-675-1806**

**Vanier Centre for Women
205 McLaughlin Road South
Brampton, ON
L6V 2M5
905-876-8300**

Courtrooms

- 102 court** Mental Health Court for fitness and remand while working on Mental Health Diversion (MHD).
- 111 court** Set date court – matters are also remanded there while working on MHD.
- K court** Domestic court
- 114 court** Drug court
- 112 court** Plea Court – matters quite often referred for MHD when illness becomes apparent during plea

Other courts are accessed as MH issues arise.

Specific Procedures

Fitness:

Not our role

Booking Beds:

Not our role

Mental Health Diversion:

The role of the MHCS&S worker is to meet with the client to determine if any assistance can be offered to access or reconnect with support for the individual within the community. These supports might include housing, psychiatry, case management, etc. Once the process has been explained and agreed to by the client, the Crown Attorney or designate will decide on the outcome of the charge, if it is appropriate for Mental Health diversion, and will make the final decision based on the recommendations made by the MHCS&S worker.

1. During the initial interview with the client, he or she will be presented with a number of case management options. Be clear upon presentation that Mental Health Diversion is a voluntary process. The client needs to decide if this is an option they wish to pursue. The client has the option to plead guilty, have a trial, accept Mental Health Diversion or sign a peace bond.
2. Explain the process to the referral source. The Crown Attorney makes the final decision about what the outcome of the charge will be. Your role is to meet with the client and see if you can be of any assistance in accessing

supports for the individual. These supports may include housing, psychiatry, case management etc.

3. Be clear that MHD is a voluntary process and that the client needs to decide if this is an option they wish to pursue. Depending on the nature of the offence, explain to them that if they agree to Diversion that a discussion must happen with the Crown Attorney. The Crown Attorney may be asking for certain things. In situations where the charges are more serious the Crown will usually request that the individual is seeing a psychiatrist and on medication. If the charges are less serious, such as theft under or mischief, the Crown may be content to divert if the individual has supports in the community.
4. There will be situations when the client is not well enough to have a conversation about their options. It is recommended that you inform them that you are there to assist and support, and focus on connecting with the client. At some point you may be able to begin discussing with the client what their options are.
5. It is important to obtain the Crown brief or 'dope sheet' as soon as possible. The Crown brief contains all the information about the alleged current offence, as well as the individual criminal record. Review the police synopsis. Some charges are so blatantly inappropriate for diversion that you can request that the Crown endorse the brief as 'inappropriate for mental health diversion'. If it seems obvious on the basis of the charge(s) that the case is appropriate for diversion, have an initial conversation with the Crown and have the Crown brief endorsed as 'appropriate for mental health diversion' or 'potential mental health diversion'. There are exceptions; for instance, if the charges are very minor, such as theft under, and the individual appears in court with the doctor's note indicating that they are suffering from a mental illness, the Crown may withdraw or stay the charges on that day. You can arrange follow-up appointments with the individual if necessary. If the charges are in the 'gray area', such as an assault, the Crown will endorse the brief 'potential mental health diversion' with a long period of stability, input from the Officer-In-Charge (OIC) and the victim.
6. After the initial conversation with the Crown, you will work with the client toward a plan that they have agreed on. This plan may include seeking new housing, a case manager etc. It is important that the client sign any necessary consent forms, such as consent for the disclosure of information and mental health court support services internal consent forms.
7. You may meet with the client for a few weeks or it may take many months and sometimes more than a year to engage the client and set up an

appropriate plan. During this time you will try and connect with the OIC if required. It is the job of the OIC to contact the victim.

8. When the situation has come to the point where the OIC and victim are content, you have obtained support letters and the client seems ready for the case to resolve, approach the Crown team leader to endorse the brief as 'appropriate for mental health diversion – charges stayed or withdrawn or peace bond listing conditions'.
9. Ensure that the client understands what a stay, withdrawal or peace bond all mean. Offer follow-up appointments if warranted. If not, discharge their case.

The role of the MHSW involves extensive consultation and providing of information to court officials and the public regarding court process, mental health, income, and housing/shelter referrals.

Tokens, Clothing & Individual Support:

Tokens and clothing are provided to mental health clients who are released from custody. Individual support is available to all persons with mental impairment who fit the criteria for the program.

Safety & Risk Management

Panic Buttons are available at each MHCS&S worker's desk

Concerns about air quality, heating, cooling can be directed to City of Toronto Maintenance staff, the Manager of Court Operations and should simultaneously be reported to the program manager.

Fire Safety, Bomb Threat & Other Emergency Procedures (courthouse-wide). *Please see Building Fire Safety and Evacuation Plan manual located in Room 20.*

**13.5 Court Specific Section
Scarborough Courthouse**

SCARBOROUGH COURTHOUSE (COVERING SCARBOROUGH/EAST TORONTO REGION)

Mental Health Court Support and Services Program
Ontario Court of Justice
1911 Eglinton Ave. East, Courtroom 403
Toronto, ON
M1L 4P4
Tel: 416-285-4177
Fax: 416-285-4177

Mental Health Court Support and Services Program Contact Information

Mental Health Court Support Staff (CMHA):

Kathy Chau, court support worker 416-285-4177
kchau@cmha-toronto.net

Kelly Goodwin, case manager 416-285-4177
kgoodwin@cmha-toronto.net

Larry Haseman, court support worker/
case manager 416-285-4177
lhaseman@cmha-toronto.net

Antonella Wilson, court support worker 416-285-4177
awilson@cmha-toronto.net

Program Manger (CMHA):

Frank Sirotich 416-289-6285x286
fsirotich@cmha-toronto.net

Building Access

There is only one accessible entrance to the courthouse. It is a public entrance and it is located on Eglinton Ave. The hours of operation for the building are Monday – Friday, 8:30 – 5:00. There is no after hours admittance to the building by staff.

Keys to the Mental Health Court Support Office may be obtained from the Manager for Court Operations, Ann Olah. The office of the Manager for Court Operations is located in the Criminal Intake Office (Court's Administration) section of the court located by the front entrance of the building.

Emergency Exit:

The nearest exist from the Mental Health Court Support Office is the main entrance located on Eglinton Ave. The next closest exit is an emergency exit located on the west side of the building which exits onto Lebovic Ave.

General Office Orientation

Photocopying

Small amounts of photocopying may be done on the office fax machine. Large amounts of copying may be done on the copier located in the Criminal Intake Office. The copier nearest the front window is available for use by the court support staff.

Obtaining Office Supplies

Office supplies may be obtained through the Office Manager of the East Office of the Canadian Mental Health Association. The Office Manager is Diane Webber. The telephone number for the Office Manager is 416-289-6285x231. Requests for office supplies may be made verbally. Supplies are delivered to the East Office. Court Support staff are notified when the requested supplies have arrived and may pick up the supplies from the East Office.

Lock Up Procedures

Client files are kept in three cabinet files and the cabinets should be locked at the end of the business day. Office lap tops should be placed in locked cabinets at the end of the business day. Doors to the office should be locked when staff leave the office.

Key Contact Persons/Organizations

Administrative Justice

Madame Justice Gail Dobney

Tel: 416-325-0861 Fax: 416-325-0359

Administrative Justice of the Peace

Her Worship Justice Leslie Brown

Tel: 416-325-0354 Fax: 416-325-0359

Crown Attorney's Office

Crown Attorney Tony Laparco

Tel: 416-325-0342 Fax: 416-325-0342

Duty Counsel's Office

Team Leader Yoland Edwards

Tel: 416-757-6257 Fax: 416- 757-4374

Court Clerks

Tel: 416-325-0972

Adult Probation Office

Nancy Turner-Grant

Tel: 416-325-0312

Toronto Bail Programme

Bonnie Philbert

Tel: 416-757-9956

Julie Panos

416-757-9956

Police Bureau

Tel: 416-808-4700

Bruce Petley, Location Administrator

Court Cells

Supervisor's Office

Tel: 416-808-4712

Booker

416-808-4714

Salvation Army Chaplin

Tel: 416-326-7753

Major Jane Archer

Adult Diversion

Operation Springboard

Tel: 416-755-1168

Laurie Kelly

Victim/Witness Assistance Program

Tel: 416-325-0351

Joanne Langford, Manager

Area Jails

Toronto East Detention Centre (TEDC)

Tel: 416-750-3513x217

Nursing Station

Fax: 416-750-9852

Don Jail Medical Unit

Tel: 416-325-4444

Toronto Youth Assessment Centre

Health Care

Tel: 416-314-0815

Whitby Mental Health Centre

Robin Bowerman,
Regional Forensic Coordinator

Tel: 905-427-9233x6580

Fax: 905-430-4033

Centre for Addiction and Mental Health

Mary Desousa, Court Liaison Worker

Tel: 416-535-8501x2936

Fax: 416-583-4327

Assessment & Triage Unit

Robin Nicholas, Manager

Tel: 416-535-8501x2967

Police Division

41 Division

Tel: 416-808-4100

42 Division

Tel: 416-808-4200

Courtrooms

Courtroom 412

Show Cause/Bail Court

Courtroom 406

Plea Court

Courtroom 407

Set Date Court

Courtroom 408

Youth Court

Courtroom 400

Domestic Violence Court

Specific Procedures***Diversion Process***

The specific procedures followed by court support staff when dealing with potential diversion matters are outlined below.

- 1) Following referral to the program, the court worker should ensure that the accused has had an opportunity to consult with his or her counsel or with duty counsel about applying for Mental Health Diversion. Further, the court worker should ensure that defence or duty counsel consent to having the accused interviewed for the purpose of assessing suitability for diversion.

- 2) The court support worker should review the Crown's brief or disclosure to determine what charge the individual is facing. Only individuals charged with a Class I or Class II offence may be considered for diversion. If the accused is charged with a Class III offence, the court support worker should advise the accused that the accused is not eligible for diversion. In exceptional circumstances, where defence/duty counsel has canvassed the issue of diversion for a Class III offence with the Crown's office and where the Crown has agreed to consider the issue of diversion, the court support worker may assist the accused with the diversion process despite the severity of the charge. The worker may also provide consultative services for accused persons who are not eligible for diversion.
- 3) Before conducting the intake interview, the court worker will advise the accused of the limits of confidentiality (please see Section 8.3 above regarding warning of limits of confidentiality above). The court worker should advise the accused that participation in diversion is voluntary and that the accused is free to change his or her mind about participating in diversion and may instead elect to go to trial or seek resolution through a plea of guilt. Finally, the accused should be informed that the information obtained from him or her or from his/her service providers will be shared with the Crown Attorney as it is the Crown who decides whether the accused is suitable for diversion.
- 4) Once the accused provides consent to continue, the accused is interviewed and assessed by the mental health court worker.
- 5) Following assessment, the worker will make recommendations to the client of what services might be helpful. These recommendations will include obtaining a psychiatric assessment and may also include obtaining shelter and financial assistance or participating in substance abuse counseling or other types of rehabilitation (e.g. anger management, shoplifting groups). Case management might also be recommended.
- 6) The court worker will ask the accused to sign all necessary consent to disclosure forms to enable the worker to contact current treatment or service providers or to refer the accused to such supports.
- 7) Where the client is in agreement with the worker regarding a service care plan, the court worker will ask duty or defence counsel to adjourn the accused person's matter for a period of time (generally 4-6 weeks) to enable the worker to contact the appropriate treatment and service providers.

Where the client and the worker cannot come to a mutually agreed upon treatment plan, the client should be redirected to defence counsel or duty counsel and the client's file should be closed.

- 8) The court worker will send a letter to the accused person's psychiatrist requesting a brief report addressing diversion. (See **Appendix 3** for sample letter). As per the requirements of the Scarborough Crown Attorney's Office, the letter to the client's psychiatrist will also indicate any prior convictions the client may have had. In addition, the court worker should also include a copy of the Crown's synopsis and copies of signed consent to disclosure forms which allow

for the exchange of information between the program and the accused person's psychiatrist. A copy of the letter that is to be sent to the client's psychiatrist will be provided to the client.

Where the client has no psychiatrist, the court worker will refer the individual to the court psychiatrist. The court psychiatrist will prepare a letter addressing the Crown Attorney's criteria for diversion. Before the court psychiatrist produces any report in respect of diversion, the accused should sign consent to disclosure forms allowing for the release of the report to the Mental Health Court Support Program. If treatment and psychiatric follow-up are required, the client may be linked to the Justice and Mental Health Program at the Scarborough Hospital.

- 9) With the client's agreement, the worker will assist the client to access the needed services, and may refer the client to see the court support case manager until other supports are in place (see Case Management section above for description of types of services provided by the case manager.)

Where the court worker receives a report from the accused person's psychiatrist (or from the court psychiatrist where the person does not have a psychiatrist) and where the said report endorses Mental Health Diversion, the court worker will consult with the Duty Crown on the day of the accused person's court appearance as to the accused person's suitability for diversion. Receipt of a report from the accused person's psychiatrist addressing the accused's suitability for diversion is necessary before an accused may be considered for diversion. Once the report is available, the Duty Crown determines whether the accused is a candidate for diversion. Where the accused is charged with a Class II offence, the Duty Crown will obtain the approval of the Crown Attorney. The Duty Crown or Crown Attorney may ask for a recommendation from the court worker regarding the appropriateness of diversion for the individual. In offering an opinion, the court worker may consider the following: what the accused person's diagnosis is (generally individuals with a major mental illness are suitable whereas person's whose primary diagnosis is a personality disorder are not); how amenable the accused is to the treatment recommended by his or her psychiatrist, what the accused person's prognosis is as opined by his or her psychiatrist; and, whether the accused has had previous diversions and/or convictions. In providing an opinion to the Crown, it is important that the court worker not act as an advocate for the accused as the accused has counsel or duty counsel to provide this function. Rather, the worker should supply information in an impartial manner when assisting the Crown to make a decision on the issue of diversion. Ultimately, any recommendations of the Crown will be made based on the conclusions in the psychiatric report and on the accused person's willingness to comply with treatment.

Where the court worker receives a report from the accused person's psychiatrist (or from the court psychiatrist) and where the said report does not endorse Mental Health Diversion, the client will be given a copy of the letter, advised of his or her ineligibility for diversion and redirected to defence or duty counsel to obtain legal advice about available options. The court worker need not approach the Duty Crown about the prospective diversion candidate's ineligibility nor provide the Crown with a copy of the psychiatric report. Though the individual may not be eligible for diversion, the court worker may continue to provide

consultative services to the individual. Further, the individual may continue to receive follow-up service from the program's case manager.

- 10) If the Duty Crown determines that an accused is a suitable candidate for diversion, the accused person's matter is typically adjourned for a period of time (generally 6-12 weeks) to allow the accused to follow through with treatment as recommended by his or her psychiatrist. The court worker may in some instances request a second follow-up letter or a verbal report from the accused person's psychiatrist as to the progress and mental status of the accused. When the accused returns to court, the court worker will either approach the Duty Crown for final approval where the accused has been compliant with treatment or will request a further adjournment where more time is necessary for the accused to adhere to his or her treatment regimen. The accused, his counsel and the court would have to agree to the suggested adjournment. Where Duty Crown agrees to divert the charges, the court worker will complete the Mental Health Diversion Form and Duty Crown will sign the diversion form. A copy of the form is put into the Crown's brief and a copy is kept in the client's file. The accused then attends in Courtroom 406 will stay the charge(s) against the accused. The original diversion form should be given to the court clerk to be attached to the Information once the charge has been stayed.

(Note: In some instances, an accused person's charges may be stayed once the Crown has reviewed the report from the accused person's psychiatrist or the court psychiatrist. Generally, however, the Crown will want to adjourn the matter for a period of time to ensure that the accused is complying with treatment because once the charge is stayed/withdrawn and the accused is diverted, the Crown relinquishes its right to prosecute the diveree for the alleged offence, regardless of whether or not the accused abides by the agreed upon treatment program. The Assistant Crown attorney, with the permission of the Crown Attorney, can reinstitute the proceedings within one year in certain circumstances.)

- 12) Where the client has no community support worker, the court case manager may continue to provide service to the client after the charges are diverted until the client is linked to longer term services.
- 13) Where an accused person is not approved for diversion by the Crown, he or she continues through the criminal justice system until the charges are disposed of either by way of trial or by an admission of guilt. If the client has no case manager, he or she may continue to avail his or herself of the services of the court case manager until more permanent services can be arranged. If the client requires treatment and psychiatric follow-up, court support staff may link the client to the Justice and Mental Health Program at the Scarborough Hospital.

Consultation for the Judiciary on Cases Referred for Advice on Disposition

Prior to sentencing a mentally ill offender, the judge may request that the court support program develop a service care plan for the individual. This plan may be incorporated into a probation order or conditional sentence order by the court. In assisting the court, the court worker may enquire for the court about program and service availability and arrange assessments as well as referrals to mental health services. The court

worker may also refer the individual to the program's case manager and/or to an off-site psychiatrist affiliated with the program to provide short-term community support until longer-term supports are in place.

The following procedure is followed for cases referred by the judiciary for consultation on disposition:

- 1) Following an individual's referral to the program by the judiciary, the court worker will ensure that duty counsel or the accused person's counsel consents to the accused being interviewed.
- 2) The court support worker should review the Crown's brief and any psychiatric reports which Crown or defence counsel may have available in respect of the accused.
- 3) Before conducting an interview, the court worker will advise the accused of the limits of confidentiality and advise the accused that his or her participation is voluntary. (Please see the Section 8.3 above regarding limits of confidentiality for a detailed description) The worker will advise the accused of the purpose of the assessment—to provide suggestions to the court regarding a service care plan for the accused. The accused will be advised that any suggested plan may be incorporated into probation or conditional sentence terms by the court.
- 4) Once the accused provides consent to continue, the accused is interviewed and assessed by the mental health court worker.
- 5) Following assessment, the worker will make recommendations to the court about what services might be helpful. These recommendations may be written in the form of possible probation or conditional sentence terms. Any suggested terms should be in line with the policy on bail and probation orders outlined in Section 8E of this manual. Where suggested terms are submitted, a copy should be given to defence counsel, the Crown and the presiding judge. The court will determine what conditions and, by extension, which services recommended are appropriate for the accused. Providing suggested probation terms which outline the proposed service care plan expedites the sentencing process and reduces the likelihood that the program is named in an inappropriate fashion on probation orders.

Note: Staff persons of the court support program do not act in a supervisory role with regard to an accused and as such the program should not be named on any probation order or conditional sentence order in a fashion suggesting a supervisory role over the accused. The program may, however, be named to provide consultative service to a probation officer or conditional sentence supervisor. That is, the program should not be named on an order in a manner which instructs an accused to take counseling as directed by the program. However, the program may be included in a probation term that orders an accused to take counseling as directed by his or her probation officer in consultation with the Mental Health Court Support Program. Such a condition requires the accused to attend for counseling as ordered by his or her probation officer and enables the probation officer to consult with the Mental Health Court Support Program as to available and appropriate mental health resources.

- 6) With the client's agreement, the worker may assist the client to access the needed services after the client is sentenced and may refer the client to see the court support case manager until other supports are in place. Where necessary, the case manager will accompany the person to appointments until other arrangements have been made. The case manager may also monitor and encourage the client's compliance with treatment measures. The level of service provided is based on the client's need(s) and level of functioning.

In some instances, the court may request that the court psychiatrist see and assess an accused prior to sentencing. Such an assessment may be arranged with the consent of defence or duty counsel. Defence or duty counsel should complete the form entitled "Request by Counsel for Psychiatric Assessment of Accused". The form provides consent to have the psychiatrist assess the accused, produce a report and release the report to the Mental Health Court Support Program, to the Crown and to the court. The signed form should be kept in the client's file. Without the written consent of counsel, the court psychiatrist will not interview the accused for the court for the purpose of sentencing. It should be made clear to the court and counsel that the psychiatrist can only conduct a brief general psychiatric assessment at the courthouse and write a short psychiatric report. Please see "Guidelines for Content of General Psychiatric Assessment Reports" section below for a detailed description of the content of such a report and see the section entitled "Procedures Followed by Psychiatric Consultant for Production of General Psychiatric Assessments for the Court" for a description of the steps required to arrange the production of a general psychiatric report by the psychiatric consultant for sentencing. Generally, the report may comment on diagnosis and on whether the accused is certifiable under the Mental Health Act. It will also likely include recommendations about treatment or further assessment.

Where the accused is seen by the psychiatric consultant and is deemed to be certifiable under the Mental Health Act, the follow steps will be undertaken:

- (1) The psychiatrist will complete a Form 1.

- (2) Where a Form 1 is issued and where the accused is released following sentencing, the court worker will contact police and arrange for the accused to be transported to the nearest Schedule I facility (Scarborough General Hospital). The court worker should speak to the police constable stationed at the courthouse (Cons. Bob Hopkins) and present him or her with the Form 1 so that the accused may be apprehended under the Mental Health Act. The accused may be kept in a separate cell until a police escort is arranged to take the accused to hospital.

- (3) The worker will also contact the crisis worker on call at the hospital and advise him or her of the accused person's arrival. The court worker should request that the crisis worker or designate notify the court support program when the client is discharged from hospital. In this way, the court worker or case manager may initiate further contact with the client and engage him or her for the purpose of providing support.

Consultation for Bail Court and the Bail Program

In a similar fashion to consultations for sentencing, the program also provides consultations for the purposes of bail. With the consent of duty counsel or defence counsel, the court worker will see and assess an accused in custody and may develop a service care plan which may be incorporated into a bail order. Through this service, mentally ill accused need not remain incarcerated pending resolution of their charge(s) but are instead diverted from jail to community supervision. The program also works with the Toronto Bail Program to assist mentally ill accused persons to meet the terms or conditions outlined in their bail order by linking the accused to necessary treatment and support services.

The following procedures are undertaken for bail court consultations:

- 1) Following an individual's referral to the program, the court worker will ensure that duty counsel or the accused person's counsel agree to allow the accused to be interviewed. The court worker cannot interview the accused in-custody unless defence/duty counsel consents.
- 2) The court support worker should review the Crown's brief, especially the Show Cause.
- 3) Before conducting an interview, the court worker will advise the accused of the limits of confidentiality and advise the accused that participation is voluntary. (Please see Section 8.3 regard limits of confidentiality for a detailed description of these limits.)
- 4) Once the accused provides consent to continue, the mental health worker will interview and assess the accused.
- 5) Following assessment, the worker will make recommendations to the accused and his counsel about what services might be helpful. When formulating a service care plan, the worker should keep in mind the grounds on which an accused may be detained. According to Sec. 515(10) of the Criminal Code, the grounds for an accused person's detention are threefold. The first being "to ensure his or her attendance in court in order to be dealt with according to law". This is referred to as the *primary* ground for detention. A number of factors are relevant to the primary ground for detention, not all of which have any connection with criminality. These include a lack of residence, a lack of family in the jurisdiction, and previous failures to appear in court. Some of these concerns, in some instances, may be addressed if a mentally ill accused person has found a stable residence and has community supports to remind him of court appearances and to assist him to come to court. The second ground for detention is "for the protection or safety of the public, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence". This is referred to as the *secondary* ground for detention. Factors related to the secondary ground include a person's criminal record, implications of dangerousness to any person, failures to comply with court orders in the past and a lack of persons in the community who can monitor and manage the accused. Where there is concern that an untreated mentally ill accused person poses a risk to public safety, such a

concern may, in some instances, be alleviated if the accused can be linked to appropriate treatment and support services. The third ground for detention is “to maintain confidence in the administration of justice, having regard to all the circumstances, including the apparent strength of the prosecution’s case, the gravity of the nature of the offence, the circumstances surrounding its commission and the potential for a lengthy term of imprisonment.” This is referred to as the *tertiary* ground for detention. Addressing concerns related to this ground for detention are beyond the scope of the service provided by the court support program.

- 6) If the accused person agrees to the proposed service care plan, the recommendations of the court worker respecting treatment and support services may be provided to defence and the Crown in a written format that outlines possible terms of bail. The suggested bail terms would incorporate the elements of the proposed service care plan. The court will determine what, if any, of the conditions are appropriate. It is important that neither the court support program nor its staff be named on a bail order in a fashion suggesting that the program or its staff will function in a supervisory capacity over an accused. This is beyond the scope of service provided by the program. (Please see Section 8E above for an elaboration of the policy on court support staff appearing on bail orders.) It is the role of the program to link an accused to services and to provide support to an accused to meet the conditions of bail; however, the actual supervision of an accused person’s compliance with the terms of bail is the role of the bail supervisor or the surety. Moreover, as in all cases, the court worker does not advocate for the release or detention of an accused. Rather, the court worker’s role is to develop a possible plan of care for the accused, where the accused consents, and to provide information to the court about the details of a possible plan of release. Defence or duty counsel will argue the merits of the possible release plan and the court will decide the appropriateness of release for the accused.

In some instances, the court worker may recommend to duty or defence counsel that the accused be seen by the court psychiatrist. Alternatively, counsel may request that the psychiatrist see the accused. In either case, counsel should provide a written request before the psychiatrist sees the accused in custody. Defence or duty counsel should complete the form entitled “Request by Counsel for Psychiatric Assessment of Accused” as an acknowledgement of consent for assessment and for the release of any report produced by the psychiatrist. The signed form should be kept in the client’s file. It should be made clear to defence or duty counsel that the psychiatrist can only conduct a brief general psychiatric assessment. Please see the section “Procedure Followed by Psychiatric Consultant for Production of General Psychiatric Assessments for the Court” below for a detailed description of the steps required to arrange the production of a general psychiatric report by the psychiatric consultant for the purpose of bail. Also, please see the section entitled “Guidelines for Content of General Psychiatric Assessment Reports” below for a detailed description of the content of general psychiatric reports. As is indicated below, the psychiatrist’s report will neither endorse nor oppose the granting of bail nor will it provide an actuarial assessment of risk of violence. It may or may not comment on diagnosis, it also may or may not comment on recommended treatment for an individual depending on the availability of collateral information and the accused person’s

presentation at the time of interview. The report will comment on whether the accused meets the criteria for under the *Mental Health Act* for the signing of a Form 1, and where appropriate, the psychiatrist will do so.

In the event an accused is granted bail and a Form 1 has been issued, the court worker will arrange for the accused to be transported to the nearest Schedule I facility (Scarborough General Hospital). Arrangements should be made after bail is granted but prior to the actual release of the accused from custody. The court worker should speak to the police constable stationed at the courthouse (Cons. Bob Hopkins) and present the constable with the Form 1 so that the accused may be apprehended under the MHA. The police constable stationed at the courthouse will arrange for a police car to pick up the accused and take the accused to hospital. The worker will also contact the crisis worker on call at the hospital and advise him or her of the accused person's forthcoming arrival. When speaking with the crisis worker, the court worker should also request that the court support program be notified of the client's discharge from hospital. In this way, the court worker or case manager may initiate further contact with the client and engage him for the purpose of providing support. The issuance of a Form 1 may be a key component of an accused person's release plan, as the court may be more amenable to releasing the accused if it is aware that the accused will be taken to hospital for further assessment.

Note: The authority for the hospital crisis worker to disclose this information may be found under:

- Subsection 20(2) of the *Personal Health Information Protection Act*, which permits a health information custodian to assume that it has the client's implied consent to provide his or her personal health information to another custodian under the Act for health care purposes. The exception is where the hospital is aware that the client has expressly withdrawn the implied consent. See Footnote 1 on page 8 for further details.
- Subsection 35(2) of the *Mental Health Act*, which permits the officer in charge of a psychiatric facility to collect, use or disclose a patient's personal health information, with or without the client's consent if the client is detained under either the *Mental Health Act* or the mental disorder provisions of the *Criminal Code*.

- 7) In some instances, counsel will ask that the court support program work in conjunction with the Bail Program to devise a plan of release for an accused. Where an accused signs consent to disclosure forms or where his counsel provides consent for the exchange of information between the two programs, the court support staff will share with the Bail Program recommendations for mental health and community services. The court worker may also make suggestions to the bail worker about specific bail conditions addressing treatment or support services. The bail worker will indicate which conditions are permissible according to the bail program's policies.
- 8) Where a mentally ill accused is detained or where his matter is remanded to another day, the court worker should ask duty or defence counsel to request that the warrant of remand be endorsed "For Medical Attention". In this way, the accused will be flagged for detention centre staff and will receive medical attention and will be offered treatment. Where the court worker has obtained

clinical information from the treatment and service providers of the accused with the accused person's written consent, the worker will disclose this clinical information with the accused person's consent to the Health Care Coordinator at the East Detention Centre. This will promote continuity in the accused person's treatment.

Screening for Fitness

The MHCS&S staff may also screen for fitness concerns when interviewing an accused and notify duty/defence counsel of any potential issues regarding fitness. The court support worker may wish to use a checklist when screening an accused regarding the issue of fitness. As a result of the screen, individuals identified as clearly unfit or marginally unfit may be referred to the court psychiatrist for a formal brief fitness assessment. Such formal assessments would occur after a motion is brought to the court by defence or Crown and a court order for a fitness assessment rendered. Please see below the section entitled Psychiatric Assessments for an elaboration of the process for arranging formal court-ordered fitness assessments.

It should be noted to defence/duty counsel that the screening process by the court worker does not constitute a formal assessment. Further, if the accused is screened as fit, this would not preclude defence/duty or the Crown from seeking an order from the court for a formal fitness assessment.

Psychiatric Assessments

A forensic psychiatrist is available two half days per week (Tuesday and Friday) to see individuals in and out of custody for the purpose of assessment. The psychiatrist may perform fitness assessments or brief general psychiatric assessments. The psychiatrist may also undertake assessments to provide Crown and defence counsel with an opinion on an accused person's suitability for Mental Health Diversion. The following subsections describe the type of assessments the psychiatric consultant may perform, suggest guidelines for the content of the various assessment reports and stipulate the procedures to be undertaken by the psychiatric consultant and the type of authorization required for the production of the various psychiatric reports.

Fitness Assessments by the Court Psychiatrist

The psychiatric consultant may assess persons in and out of custody on the issue of fitness to stand trial and may produce a report for the court providing an opinion on this issue. Before the psychiatric consultant sees an individual to assess fitness, the court must complete a Form 48. In completing a report, the consultant should limit his or her opinion to the issue of fitness and not address other psycholegal issues. Please see the subsection "Assessment by Court Psychiatrist" under the section "Coordinating Court-Ordered Assessments and Treatment" below for a descriptions of the procedures the court worker would follow to facilitate a fitness assessment by the court's psychiatric consultant.

General Psychiatric Assessments for the Court

General psychiatric assessments of individuals for the court may be requested by counsel in order to assist the court in bail proceedings or in sentencing matters. They may also be requested by counsel for youth 16 and over who may be eligible for Alternative Measures in youth court.

The purpose of brief general psychiatric reports is twofold: first, to provide information to the court on diagnostic and treatment related concerns which may assist in the administration of justice; second, to assist the Mental Health Court Support Program to formulate a service care plan for an individual before the courts. These reports, however, are not intended to serve as a medium to provide psycholegal opinions on issues of fitness, criminal responsibility or risk of recidivism. Rather, these reports are limited to providing opinions on diagnostic and treatment issues.

Procedures Followed by Psychiatric Consultant for Production of General Psychiatric Reports for the Court

The following section outlines the steps required to arrange the production of a general psychiatric report by the psychiatric consultant for the court.

1. Defence/Duty Counsel must complete a “Request by Counsel for Psychiatric Assessment of Accused” Form. The form provides consent to allow the psychiatric consultant to assess the individual, produce a report and provide a copy of the report to the Mental Health Court Support Program, to the Crown and to the court.
2. Prior to initiating the assessment, the individual should be informed of the following by the psychiatric consultant:
 - i) A request has been made by defence counsel to have the psychiatric consultant see the individual for the purpose of conducting a psychiatric assessment and producing a report.
 - ii) Participation in the assessment is voluntary and the individual may decline to be assessed or may refuse to answer specific questions posed.
 - iii) The assessment is not confidential. If the individual agrees to participate a report will be produced which will be made available to the court and to the Mental Health Court Support Program.
 - iv) The report generated could conceivably be used as evidence against the individual as could any statement made during the course of the assessment.
 - v) The individual may speak with his or her counsel before consenting to participate in the assessment.

The psychiatric consultant may wish to use a checklist that outlines the components of the above warning to ensure that the individual is fully apprised of the restrictions on confidentiality and the potential consequences of participating in a psychiatric interview. A checklist entitled “Warning Regarding Limits of Confidentiality” is available for the psychiatrist’s use.

3. Before conducting the psychiatric assessment, the consultant will note whether the individual appears capable of providing or withhold consent to participate. The basis for determining whether the individual is capable of consenting to the assessment is the “operating mind test”. The operating mind test requires that the individual have sufficient cognitive capacity to understand what he or she is saying and understands what is occurring and the consequences of behaviour. Specifically this includes the ability to understand a caution that statements can be used as evidence against him or herself. If the consultant feels that the individual may not be capable of providing consent, the interview will be stopped and no psychiatric report will be produced. Defence/Duty counsel should be informed that the individual may not be capable of providing consent to being assessed.
4. Where the individual is capable of providing consent and provides such consent, the psychiatric assessment will be undertaken.
5. Following the assessment, a brief psychiatric report will be produced. For a description of what may or may not be included in such a report, please see the subsection “Guidelines for Content of General Psychiatric Assessment Reports” below.
6. A copy of the report will be provided to the Mental Health Court Support Program, to defence/duty counsel, and the Crown to the court.

If at any time prior to the submission of the psychiatric report to the Crown or court, the accused or his or her counsel withhold or revoke consent to the disclosure of the report, no psychiatric report shall be produced and, if one is already produced, it will not be submitted. The individual and/or counsel should provide written notification of the revocation of consent to disclosure. However, individuals who are in custody may revoke consent verbally by directly informing the psychiatric consultant or mental health court support staff. The revocation should be documented.

Guidelines for Content of General Psychiatric Assessment Reports

The following guidelines pertain to what content may and may not be included in reports provided to the court.

Generally, these reports may provide statements on the following subjects:

- Presence or absence of mental disorder,
- Diagnosis or differential diagnosis
- Mental Status and observed clinical characteristics
- Whether the individual meets the criteria for a Form 1 psychiatric assessment under the MHA
- Treatment recommendations including linkages to community support and counselling services
- Willingness of patient to accept psychiatric treatment

These issues are not psycholegal issues and do not raise issues of judgment, foundation or historical truth.

In order to avoid incursion into areas which are the exclusive domain of the court or entanglement in issues which are best addressed through a court-ordered forensic assessment, brief general psychiatric reports produced for the Mental Health Court Support Program and the court at the behest of defence counsel should not include statements on the following subjects:

- Fitness to stand trial
- Criminal responsibility
- Dangerousness (i.e. intermediate and long-term risk of violence)
- Accused's propensity to commit an act
- Likelihood of recurrence of (alleged) offence
- Credibility of accused as potential witness
- Suitability for bail
- Suitability for incarceration
- Ability to be specifically deterred by incarceration
- Remorse
- Statements by the defendant related to the alleged index offence

In these reports, the individual should be referred to by his or her proper name rather than as "the accused". The complainant should not be referred to as "the victim" in any report prepared at the pre-trial stage as such a reference may be viewed as prejudicial. If any reference is made to the complainant, he or she should be referred to by his or her proper name or be referred to as "the complainant".

Included in the report should be a statement indicating the basis of the opinions provided therein (i.e. clinical observations or reports from collateral sources). The report should also identify the limitations of the opinions provided such as the brevity of the assessment or the lack of collateral information. Moreover, a statement indicating that the report does not constitute a forensic risk assessment should be included. A statement should be included about the caution given to the individual regarding the limits of confidentiality of the assessment, the nature of the assessment (i.e. general psychiatric assessment), the potential use of the report as evidence against the individual, and the opportunity to speak with counsel before proceeding. Furthermore, a statement should be made indicating that the report was produced with the verbal consent of the individual and with the express written consent of his or her counsel or duty counsel. It should also be noted that the individual appeared to be capable to provide, or withhold, such consent. An example of this type of caveat is provided below:

The following is a psychiatric report in respect of Mr. Smith who was seen today with the express written consent of his lawyer for a brief general psychiatric assessment. It should be noted at the outset that an individual's mental status may fluctuate over time. This report is based on the above named individual's mental status as of the day of this assessment. Moreover, it should be noted that this report does not constitute a thorough general psychiatric assessment nor a forensic risk assessment. The report is limited by the brief period of time available for the assessment and by the lack of collateral information.

Prior to the initiation of this assessment, Mr. Smith was informed that I was requested to see him by his lawyer for the purpose of conducting a general

psychiatric assessment. He was informed of the nature of my professional position. He was informed that his participation in this assessment was voluntary and that he could decline the assessment entirely or he could refuse to answer specific questions posed to him. He was cautioned that if he agreed to participate this assessment would not be confidential and that a report would be generated for the court. He was cautioned that the report generated could conceivably be used as evidence against him as could any statements he made during the course of the assessment. Finally, he was advised that he could speak with his counsel before deciding whether to participate in this assessment. He declined the opportunity to speak with his lawyer and consented to proceed with the assessment. He appeared to be capable of giving, or withholding, such consent.

Assessments to Determine Suitability for Mental Health Diversion

The psychiatric consultant may be called upon to assess an individual's suitability for Mental Health Diversion. The psychiatric report for diversion would briefly address three issues: diagnosis of the accused; whether the alleged offence is related to the accused person's illness; and, the accused's anticipated prognosis. The report may also include treatment recommendations. Prior to the production of a report in respect of diversion, the client must sign consent to disclosure forms to the Mental Health Court Support Program.

Coordinating Court-Ordered Assessments and Treatment

The court has authority to order a psychiatric assessment and the production of a psychiatric report in respect of an accused pursuant to section 672.11 of the Criminal Code and sections 21 and 22 of the Mental Health Act. The assessment orders made by the court pertain to fitness, sentencing and to the issue of criminal responsibility. In addition to assessments orders, the court also has the authority pursuant to section 672.58 of the Code to order the treatment of an accused who has been found unfit to stand trial. The court may make such an order for the purpose of making the accused fit.

Where called upon, the court worker may arrange court-ordered assessments/treatment and draft such orders for the court. The worker may also track mentally ill persons who are on assessment and arrange to have such individuals brought back to court once their assessment/treatment has been completed.

The following sections outline the types of orders the court may make with respect to psychiatric assessment and treatment and outline the procedures followed by the court worker in coordinating court-ordered assessments and treatment for accused.

Fitness to Stand Trial

There are two general methods by which an accused is assessed on the issue of fitness: assessment by the court psychiatrist or assessment at a designated hospital. The following paragraphs delineate the procedures followed by the court worker in each instance.

Assessment by Court Psychiatrist

Where the court has concern with respect to an accused person's fitness and where it wishes to have the accused assessed, the court worker will undertake the following:

- 1) Complete a draft of a Form 48 and provide it to the court. The order must specify the purpose of the assessment, the place of assessment, its duration, whether the accused is to be held in custody and, if so, where.
- 2) Request that the matter be adjourned to a day when the court psychiatrist is in court.
- 3) Place a copy of the endorsed Form 48 in the file of the accused.
- 4) After the court psychiatrist completes a report, the court worker will provide copies to the presiding judge, the Crown and the defence or duty counsel.

Assessment at Designated Hospital

In some instances, the court psychiatrist after interviewing an accused will suggest a further period of assessment (usually 30 days) at a designated hospital (Whitby Mental Health Centre). Where the court psychiatrist makes such a recommendation, the court worker should undertake the following steps:

- 1) Contact the hospital to determine when a bed is available.
- 2) Draft a Form 48 order for the court.
- 3) Where the court concurs with the court psychiatrist and orders a further assessment in hospital, provide the court with the draft order and inform the court of the availability of a hospital bed.
- 4) Place a copy of the endorsed order in the client's file. Make note of the accused person's return date to court. With the consent of the Crown, a copy of the order, the synopsis and the court psychiatrist's report are faxed to the Forensic Assessment Unit of the Whitby Mental Health Centre.
- 5) Two days prior to the scheduled return of the accused to court, inform the court's police bureau of the scheduled return date so that the officers may arrange transportation for the accused person's return.
- 6) On the day of the accused person's return to court after his assessment, notify the Duty Crown of the accused person's return and of the completed assessment.

Following the assessment and receipt of the psychiatric report, the court will determine whether to have a trial on the issue of fitness. Where there is a trial on the issue and the accused is found fit, he or she will proceed in the ordinary course through the criminal justice process. Where the accused is found unfit, the prosecutor may seek from the court an order for the treatment of the accused for the purpose of making the accused fit (See Treatment Order Section below). Alternatively, the court may hold a disposition

hearing and order that the accused be detained in custody in a hospital or may direct that the accused be discharged subject to such conditions as the court considers appropriate. The court may also defer disposition to the Ontario Review Board (ORB). Where the court makes a disposition, this disposition will be reviewed by the ORB within 90 days. If the accused becomes fit at a later date he or she will be returned to court to address his or her charge(s).

Treatment Order

Where a court finds an accused unfit to stand trial, the prosecutor may, pursuant to section 672.58 of the Code, seek an order directing the treatment of the accused for a period of up to 60 days for the purpose of making the accused fit. In almost all cases, the accused will be held in custody in hospital when the treatment is administered. Before the court may order the treatment of an accused, it must first hear evidence from the psychiatrist who assessed the accused. In addition, the court must obtain the consent of the hospital where the proposed treatment is to occur. In most instances, the court psychiatrist will assess the accused and testify in court on the same day if he or she is of the opinion that the accused is unfit. In such instances, the court worker may assume the following tasks:

- 1) Contact the hospital where the proposed treatment is to occur to obtain consent from the hospital, and arrange a bed before the court psychiatrist gives evidence.
- 2) Draft a Treatment Order for the court and include the treatment recommendation of the psychiatrist on the order.
- 3) After the court psychiatrist has given evidence and the court is satisfied that a Treatment Order is necessary, furnish the court with the draft order and inform the court of the specified availability of a hospital bed.
- 4) Place a copy of the endorsed order in the client's file and make note of the client's return date. Fax to the Forensic Assessment Unit (Whitby) a copy of the Treatment Order, the Crown's synopsis of the charge(s), and any report submitted by the court psychiatrist to the court.
- 5) Two days prior to the scheduled return of the accused to court, inform the court's police bureau of the scheduled return date so that the officers may arrange transportation for the accused person's return.
- 6) On the day of the accused person's return to court after his treatment, notify the Duty Crown of the accused person's return.

In those instances where the accused has returned to court after a 30 day fitness assessment and the court wishes to have a trial on the issue of fitness, the court in most instances adjourns the matter to a day when the assessing psychiatrist is available to come to court to give evidence. In such instances, the worker should undertake the following sequential steps:

- 1) Contact the assessing psychiatrist at the behest of the court to ascertain his or her availability. Provide the court with this information.

- 2) On the day the psychiatrist is to attend in court, notify the Duty Crown of the fitness matter.
- 3) On the day of the fitness hearing, contact the hospital to determine bed availability in the event the accused is found unfit and the court makes an order for treatment.
- 4) Draft a Treatment Order for the court including the treatment recommendation of the attending psychiatrist. If the court finds the accused unfit and grants the prosecutor's application for a Treatment Order, provide the court with the draft order.
- 5) Obtain a copy of the endorsed order and place in the client's file. Keep record of the accused person's return date. Fax a copy of the order to the hospital.
- 6) Two days prior to the scheduled return of the accused to court, inform the court's police bureau of the scheduled return date so that the officers may arrange transportation for the accused person's return.
- 7) Notify the Duty Crown on the day of the accused person's return to court of the treatment order.

Where the accused becomes fit, he or she proceeds through the criminal justice system. If the accused remains unfit, the court may make a disposition for hospital detention or conditional discharge or it may defer disposition to the ORB. Where the court makes a disposition, this disposition is to be reviewed by the ORB within 90 days.

Sentencing

The court may in some instances order a psychiatric report for the sentencing of an individual convicted of an offence. Under section 21 of the Mental Health Act, the judge may order an individual appearing before him (out of custody) to attend for psychiatric assessment at a hospital, where the judge has reason to believe that the person suffers from a mental illness. Where an examination is made under this section, the psychiatrist assessing the accused is required to provide a report to the judge as to the mental condition of the person. Under section 22 of the MHA, the court may make an order remanding an accused into hospital for an assessment of up to 60 days where the individual is already in custody and where the court has reason to believe the individual is suffering from a mental disorder. The psychiatrist assessing the accused is required to provide a report of the accused person's mental condition. In both cases, the court must first obtain the consent of the hospital that the services required are available at the hospital before it can make an order pursuant to sections 21 or 22.

Currently, forensic facilities are not providing consent to perform out of custody assessments under Section 21, but individual psychiatrists may conduct out of custody assessments for the court on a fee for service basis. The court worker may facilitate the arrangement of such assessment for the court by undertaking the following tasks:

- 1) When a request for an out-of-custody assessment is made, inform both Crown and defence counsel that such an assessment is only available on a

fee for service basis. Advise both counsel of the potential cost of the assessment.

- 2) Contact the Associates at the CAMH and determine availability of a psychiatrist.
- 3) Draft a Form 6 of the MHA for the court.
- 4) Have the Crown complete a copy of the form entitled "REFERRAL FORM: Metro East Court to Law and Mental Health Program (CAMH)". This form has been developed to record relevant information for the assessing psychiatrist and to streamline billing procedures. The form will note who will pay for the assessment: the Court (Court's Administration) or the Crown Attorney's Office.
- 5) Note the client's return date to court and place a copy of the endorsed Form 6 and the completed "REFERRAL FORM" in the client's file. Fax a copy of the Form 6, the "REFERRAL FORM" and the material listed under the attached documents section of the "REFERRAL FORM" to CAMH.

Unlike for other assessments noted above, it is not necessary to notify Duty Crown of the client's return as a specific Crown will be seized with the case and will be speaking to the matter when it returns to court.

With regard to in-custody assessments under section 22, the Centre for Addiction and Mental Health (CAMH) is conducting such assessments under limited circumstances. The court worker may facilitate the arrangement of such an assessment for the court by assuming the following tasks:

- 1) Contact the hospital to obtain consent and to determine bed availability. Consent must be obtained from the program manager of the Assessment and Triage Unit.
- 2) Draft a Form 8 of the MHA for the court.
- 3) Have the Crown complete the form entitled "REFERRAL FORM: Metro East Court to Law and Mental Health Program.
- 4) Keep a copy of the endorsed order and the completed "REFERRAL FORM" in the client's file and note the client's return date.
- 5) Forward a copy of the Form 8, the completed "REFERRAL FORM" and the relevant material noted under the attached documents section of the "REFERRAL FORM".
- 6) Two days prior to the scheduled return of the accused to court, inform the court's police bureau of the scheduled return date so that the officers may arrange transportation for the accused person's return.

Unlike other instances involving assessment or treatment orders, it is not necessary for the court worker to inform the Duty Crown of the completed assessment on the day of the accused person's return from hospital as a Crown will already be seized with the matter for sentencing.

Criminal Responsibility

The court may also order the assessment of an accused where it has reasonable grounds to believe that an assessment is necessary to determine whether the accused was at the time of the offence suffering from a mental disorder so as to be exempt from criminal responsibility. The defence of not criminally responsible on account of mental disorder (NCRMD) is described in section 16 of the Criminal Code. Where the court wishes an assessment of criminal responsibility in respect of an accused, the worker may undertake the following measures to assist the court:

- 1) Contact the designated forensic hospital (Whitby Mental Health Centre) and enquire about bed availability. Currently, forensic facilities are not conducting out-of-custody assessments on the issue of criminal responsibility.
- 2) Draft an order for the court using a Form 48.
- 3) Provide the court with the draft and inform the court about bed availability.
- 4) Keep a copy of the endorsed order in the client's file and record the accused person's return date.
- 5) Send to the forensic hospital a copy of the Crown's synopsis and other relevant material in the Crown's brief.
- 6) Two days prior to the scheduled return of the accused to court, inform the court's police bureau of the scheduled return date so that the officers may arrange transportation for the accused person's return.
- 7) On the date of return, inform Duty Crown of the completed assessment and the accused person's return to court.

Upon the accused person's return to court, the court may have a trial on the issue of criminal responsibility. Where the accused is found criminally responsible, he or she is found guilty and sentenced for the offence. Where the accused is found not criminally responsible on account of mental disorder, the court will either make a disposition or defer the disposition to the ORB. The types of dispositions that the court or the ORB may make in respect of an accused found not criminally responsible include an absolute discharge, a discharge into the community subject to such conditions as the court or ORB deems appropriate, or a hospital detention order. Where the court makes a disposition, the OCCRB will review the disposition within 90 days except where the court absolutely discharges an accused. Where the court defers disposition, it may make an order for the interim detention of the accused at a forensic facility pending review of the matter by the ORB. In this latter instance, the ORB shall convene for a disposition hearing within 45 days.

Warrants of Committal

Where an accused is found unfit to stand trial or not criminally responsible on account of mental disorder, the court may order the accused to be detained in hospital either as part of a disposition or as part of an interim detention order pending a disposition hearing by the OCCRB. In either case, a Warrant of Committal is necessary to have the accused

brought to hospital. Where the court wishes to have the accused detained in hospital, the court worker may draft a Form 49 (Warrant of Committal) for the court. The court worker should keep a copy of the endorsed warrant in the client's file and fax a copy to the facility (Whitby Mental Health Centre) to which the client is going.

Arranging for the Early Return of Accused on Assessment/Treatment Orders

At times, assessments or treatment ordered by the court are completed before the expiration of the assessment or treatment order (30-60 days). In such cases, the hospital at which the accused is being assessed or treated will notify the court worker that the assessment or treatment is complete. In order to expedite the court process, the worker will notify both Crown (Duty Crown) and defence counsel so that either party may seek and obtain a Judge's Order to have the accused brought back to court prior to the lapse of the assessment or treatment order. This serves two functions. First, it reduces the amount of time an accused spends in custody. Rather than having the accused wait until his assessment or treatment order expires, he is brought to court as soon as the assessment or treatment is completed. Second, it serves to reduce the wait time of other accused who are waiting in a detention centre for an assessment/treatment bed to become available.

Safety and Risk Management

Panic Buttons

There are two panic buttons located on the right side of two desks within the office. The panic button should be pressed whenever court support staff feel that a client or an individual associated with a client is present in the office and is acting in a manner that leads the staff to fear for his/her immediate physical safety.

Air Quality, Heating, Cooling

Any concerns about air quality, heating or cooling may be addressed by bring these concerns to the attention of Ann Olah, Manager for Court Operations at the Toronto East Court. The Operations Manager's office is located in the court administration office