

# Enabling Justice

**A printable toolkit for prisoners in Ontario  
who are racialized and/or disabled.**

Enabling Justice is a resource for any prisoner but has additional content and context for racialized and/or disabled prisoners. It's meant to help you navigate the criminal legal system and connect to resources.

A more comprehensive online version at [enablingjustice.com](https://enablingjustice.com) offers support for people outside of prison who are navigating the criminal legal system.

This toolkit can be printed as plain text, large font, with additional line spacing, in a dyslexia-friendly font, or in braille.

Enabling Justice was put together by the Disability Justice Network of Ontario with funding from the Law Foundation of Ontario.



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# Foreword: Racism & Ableism in the Criminal Legal System (CLS)

The criminal legal system was born of racism & slavery.

From policing to courts to prisons to release, Black, Brown, and Indigenous people don't end up detained, arrested, or before a judge by accident. Both subtle and obvious racism within us as individuals, communities, and systems work to put and keep racialized people incarcerated every single day. Racism and ableism are so ingrained in the criminal legal system that it can't be reformed into something that's just or equitable.

We hope this project helps you navigate and survive the system, but we also know that for justice to exist, policing, courts, and prisons as we know them must end.

**The Thunder Bay police service recently admitted to “compassion fatigue” when responding to the Indigenous community, resulting in preventable deaths.**

Thunder Bay Police Lacked Compassion, Turtle Island News, November 2, 2022

**90% of Black individuals, and 82% of Indigenous peoples, identified experiencing racism within the criminal legal system as a serious problem.**

Blackness in Canada Policy Network (the Institute for Social Research)

**A report by Legal Aid Ontario identified that there are clear racial bias findings in sentencing. Black, Indigenous, and disabled people are all more likely to be detained pre-trial, receive harsher sentences, and spend more time in custody to those who aren't Black, Indigenous, or disabled.**

A Legal Aid Strategy for Bail, Legal Aid Ontario 2019

# Ableism in the Criminal Legal System (CLS)

The criminal legal system also targets people who are autistic, neurodivergent, or live with other disabilities. Police and the courts tend to punish anyone who might think differently, including those with ADHD, PTSD, depression or other mental health issues, addictions, brain injuries (e.g. concussions), & learning disabilities.

Through mental and physical chronic stress, trauma, poor diet, isolation, lack of sunlight and other prison conditions, the system itself also causes thousands of new disabilities every year.

Some estimates say that up to 79% of adult prisoners have mental health issues, and that 40% of prisoners will experience at least one major mental health crisis while in prison.

## Ableism: Does It Impact You?

Here are some examples of how ableism happens in the CLS. Talk to your lawyer and supporters if any of these apply to you.

### **1. Cognitive Barriers**

Protecting your own interests, even when you have a lawyer, requires you to read through and understand your options and legal documents. This is something that the legal system assumes you can do, without consideration for how ADHD, brain injuries, mental health issues, certain medications, memory/cognition issues, dyslexia, reading disabilities, or substance use can impact someone's ability to read, write, remember, or understand instructions or documents.

## **2. Escalated Police Interactions**

Autism, neurodivergence, or disabilities (e.g. d/Deafness, mania, psychosis, body tics, etc.) can impact how you communicate with words or body language, putting you at risk of an escalated police response that risks injury or death.

## **3. Making Bail**

If you have documented and serious mental health issues, such as bipolar or schizophrenia, you may face difficulty in being released on bail. The assumption is that people with serious mental health issues won't return to court, or will hurt someone. Courts sometimes also remand people to custody to await a bed in a psychiatric facility. This is the court weaponizing someone's disability against them and is ableist.

## **4. Case Outcomes & Harsher Sentencing**

Disabled/neurodivergent people with different communication styles (e.g. avoiding eye contact, verbal outbursts, body tics, or a flat affect) are more likely to be found guilty or face harsher sentencing because people assume those behaviours are unapologetic or uncooperative.

## **5. Segregation**

It's common for jail/prison staff to segregate disabled people, particularly people with mental health issues. While staff say it's for the individual's "protection," it's ableist and often used to address overcrowding and a lack of access to appropriate medical care. Segregation denies people the ability (and right) to socialize. Long periods of

segregation are known to cause serious harm to people's mental and physical wellbeing.

## **6. Physical Barriers**

If you use mobility aids you'll face additional scrutiny during searches and potentially inappropriate handling of you and your aids or prosthetics.

Most jails/prisons aren't physically accessible: cells are small, beds are bunked, there's stairs, lips, edges, and no grab bars etc. It's often left to individuals to navigate and sometimes rely on other prisoners for help.

Most parole facilities aren't physically accessible, which means that disabled individuals who should be released from prison can't be.

## **7. Lack of Appropriate Medical Care & Supports**

Prisoners requiring medical supervision often face extreme barriers receiving equipment, support, or care required for their conditions. This can include issues accessing medication or counselling, diabetes test strips or diabetic diets, special equipment, or mattresses, and more.

# Accessibility in the Criminal Legal System

Accessibility is part of the Ontario Human Rights Code, providing people with the right to be free from discrimination to the point of undue hardship.

Section 14 of the Canadian Charter of Rights and Freedoms also entitles you to an interpreter provided by the court if required. That said, your court or hearing could be rescheduled if an interpreter can't make it.

## Accessibility Coordinators

Each courthouse in Ontario has an Accessibility Coordinator who can help identify what online/in-person equipment or services are available for court.

You can contact them by mail, phone, TTY, video, and/or Relay Service.

If you don't know what disability accommodation you need, you can tell the coordinator about the types of barriers you usually face (e.g. not being able to read well or not understanding fast-speaking individuals).

Ask for accommodations to access courthouse services or participate in court proceedings as soon as you know you'll be using court services.

## Accessibility Equipment & Needs

The types of accommodation or support that the courts can provide will depend on your needs, courthouse and equipment/services availability.

Some of these equipment and services may include:

- Assistive listening devices



- A temporary wheelchair
- Real-time captioning: Communication-Access Realtime Translation (CART)
- American Sign Language (ASL)/langue des signes québécoise (LSQ)
- Accessible or alternative document formats of ministry documents, such as accessible electronic formats, large print, audio, and braille

The court may also be able to provide communication support to individuals with communication disabilities, such as those caused by cerebral palsy, learning disability, intellectual disability, stroke, or brain injury.

These are just some examples; other requests will also be considered.

## Interpreters

If you don't speak English/French or if you are Deaf or hard of hearing, interpreters can help you understand what is being said in court. In criminal matters, the Ministry of the Attorney General provides court interpretation services in any language required.

If you are deaf or have a hearing disability, American Sign Language (ASL) and/or langue des signes québécoise (LSQ) interpreters are also available for ministry services and all types of court proceedings.

You have the right to a court interpreter if you need one, but remember to request this as soon as you know you need a court interpreter. Time is needed to book their services.

Your lawyer may request an interpreter during the first court appearance, but if they don't and you think you need one, tell the judge or your lawyer on the record when you go to court for the first time.

## Indigenous Access

If you are Indigenous and don't want to swear on a Bible, you can "affirm" to the court that you'll tell the truth, or you can swear on an eagle feather.

The eagle feather can be used in any courthouse in Ontario. Many courthouses, including Hamilton, have feathers for this purpose. You can bring your own or ask your local Friendship Centre to provide one.

# Know Your Legal Rights

Having legal rights under the Charter of Rights & Freedoms doesn't protect you from being wrongly arrested, injured, or illegally searched, but they may help you have the charges or evidence thrown out later.

Tell your lawyer if police didn't tell you or denied your rights during arrest.

Your Legal Rights include your right to:

- 1) Know what you're being charged with
- 2) Remain silent: you only need to share your name, date of birth, and current address.
- 3) Speak to a lawyer or Duty Counsel if you don't have one
- 4) Be brought before a court within 24 hours, where possible.

## Racism, Ableism & Your Rights

Racism & ableism impact even the most fundamental elements of the criminal legal system. This is because, at its core, racism and ableism both devalue and dehumanize racialized and disabled people.

Racism and ableism in this area might look like:

- Withholding why you're being arrested, assuming you can't understand it or to hold power over you
- More agitation and harassment if you choose to remain silent
- Delays in being taken to court or being able to speak with your lawyer

## If You're Arrested

Police stations, and many police vehicles, have audio/video surveillance so don't say anything about the alleged offences in these areas!

## What Do I Need to Tell Police?

If you're under arrest, only your name, date of birth, and address. Otherwise DO NOT TALK TO THE POLICE.

Telling them anything else could give the police information they might use to charge or convict you or others.

## Can Police Search My Phone?

Legally it depends on the situation and whether your phone is locked or not. If you're charged with a crime and your phone could give police more evidence, they're generally allowed to TRY and look at it.

If your phone's locked, you don't have to give the password, but if it's locked with facial recognition or your fingerprint, they might try to hold it in front of your face or use your fingerprint to unlock it.

If your phone's locked or encrypted, police need to get a special warrant to seize and search your phone.

Whether their search is successful depends on your phone's security and the programs that the police have to search and take information from it.

## Arrested While Trans

Toby's Act and the Ontario Human Rights Code have impacted the most recent Ontario legislation about the treatment and placement of trans people. Trans people are now supposed to be "housed" according to your self-identified gender OR housing preference, unless it can be proven that there are health & safety concerns that can't otherwise be resolved.

Prison staff are to use your chosen name and pronouns in-person and in documentation, unless your legal name is required for identification.

Trans folks are also allowed to:

1. Choose the gender of personnel searching them upon admission
2. Access personal items or prosthetics necessary to express gender
3. Access private bathrooms and showers for safety

It's important to note that trans folks still face a lot of violence from and within the justice system: intense questioning and harassment by prison staff, misgendering, deadnaming, segregation, and placement in facilities based on assigned sex at birth.

Rights and policies won't prevent mistreatment but may remedy them – especially with pressure from lawyers and supporters.

## Arrested Without Status

If you are arrested when you don't have citizenship (on a visa, non-status, or permanent resident) an immigration officer will be notified of your charges. The situation can quickly get complicated and start a review of your presence in "Canada."

If police or a Canada Border Services Agent (CBSA) ask you questions when you're not in an immigration inquiry, you don't have to answer them but you should identify yourself. Don't rely on CBSA to be truthful about the law. Try not to sign anything until you talk to a lawyer.

# What to Expect if You're Arrested

## Privacy

Most court cases are open to the public. Anyone can come into a courtroom and watch the proceeding against you.

If there's no publication ban, Information about your case can be published by media or members of the public. A request for a publication ban can be brought by you (the person accused) or the Crown.

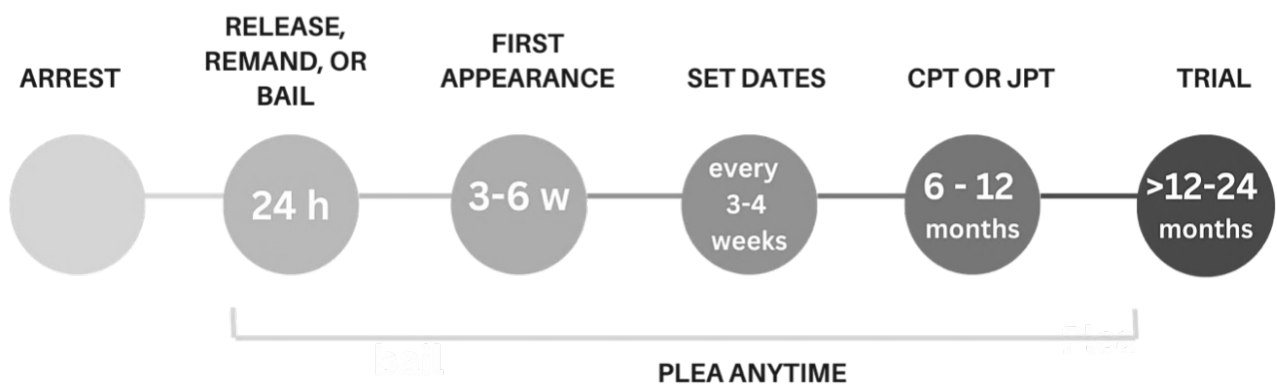
## Timeline

Charges can often take 8-12 months or more to resolve, longer if you go to trial.

Complicated trials can sometimes take more than two years.

### COURT PROCESS TIMELINE

Timeline can vary based on the charges, evidence, and whether you are in custody.



According to legal precedent of R. v. Jordan and your 11b Charter Rights, a summary offense is supposed to be heard within 18 months of when the charge was

first read in court, while an indictable offense should be heard within 30 months. These timelines can change if there are delays caused by you (the accused), new charges, or exceptional circumstances. Never waive your right to your 11b Charter Rights without advice from a lawyer.

## Impact on Health

The amount of time spent wrapped up on charges & attending court dates each month can take a toll on your physical and mental health and make you feel very isolated. This is the goal of criminalization and/or repression so aim to surround yourself with people & resources that can support you.

See our “We Keep Us Safe” section for some ideas.

## Lawyers: Duty Counsel

Duty Counsel are free lawyers at the courthouse, police station, or video court that can speak to simple matters in court and initial meetings with the Crown Prosecutor; they don't run trials. They may also be different every time with little to no communication with each other so expect to explain your specific needs to them every time you have court.

Duty Counsel can't/won't represent you in the same way private counsel can, but they can still be very knowledgeable and often have friendly relationships with court staff which can help when trying to arrange a plea.

You don't need to pay for a private lawyer if facing criminal charges.



## Lawyers: Legal Aid Ontario (LAO)

LAO is a free program that covers the cost of a private lawyer.

You can apply to LAO regardless of your income and charges; but your application will be more likely approved if you're:

1. Low income AND
2. The Crown is asking for jail time, you risk jail time by not accepting a plea, or you're already being held in jail.

## Other Notes

All lawyers - Duty Counsel and private counsel - are often focused on pleading people out on charges. It's time-consuming for them to prepare for a trial. This doesn't mean you should or have to agree to a plea - the choice is always yours. Your lawyers ultimately take direction from you.

Lawyers are often also singularly focused on getting people out of prison, that sometimes this means they want you to accept bail conditions you can't keep or conditions that are actively harmful.

This can be especially apparent when the court tries to order people not to use substances when you have an addiction, or to have trans people live under the control of transphobic guardians.

Having a lawyer who understands the challenges of these specific conditions can help keep you out of jail in the long term.

# Arrested & in Jail– Now What?

What are your choices if you're arrested and kept in jail?

## Lawyers:

Are you using duty counsel, a private lawyer, or self-representing? There are pros and cons to each choice.

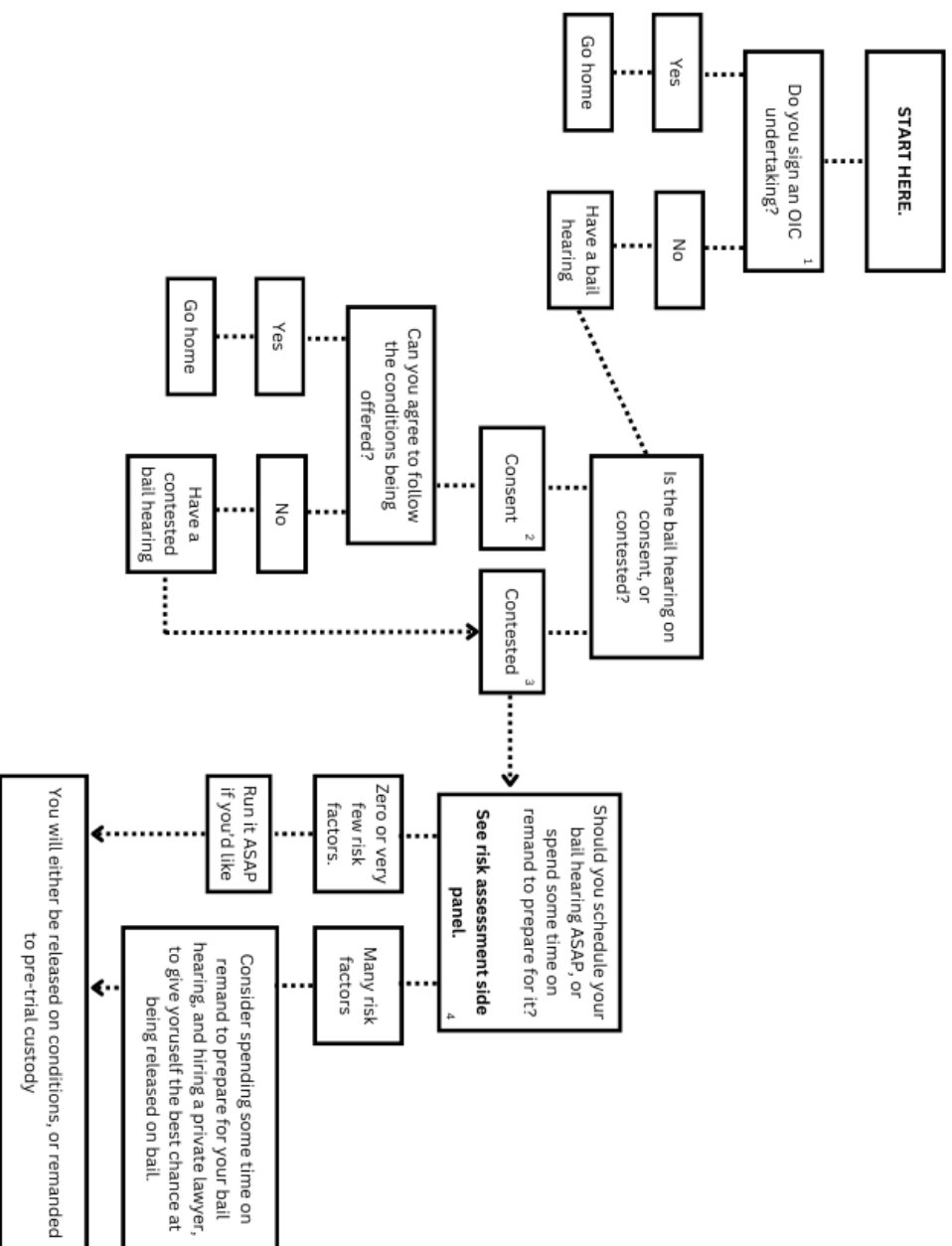
Read through our "Lawyers" section on Page #30 for more information.

## Bail:

Do you want the quickest hearing, or is it better to spend some time preparing or doing deadtime? What are your options if denied bail?

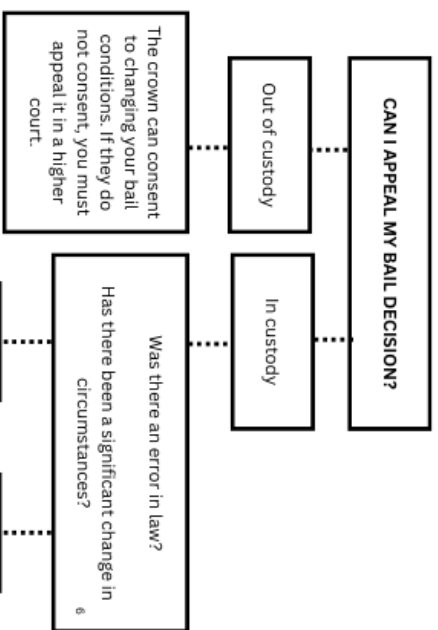
Read through our "Bail" section on Page #36 for more information.

# Decisions About Bail & Release



**RISK ASSESSMENT SIDE PANEL**

- Are you Black, Indigenous, or racialized?
- Do you have a mental health diagnosis?
- Are you autistic, neurodivergent, ADHD, or have a learning disorder?
- Are you unhoused?
- Are you unemployed?
- Do you have previous breach charges from failing to attend court or not following your probation or bail?
- Do you have previous convictions?
- Do you have other ongoing charges?
- Will your bail hearing be a reverse onus hearing? <sup>5</sup>
- Are you charges serious?
- Are the circumstances of your arrest polarized?
- Will you need a surety?



## Additional Information

1. An OIC (Officer In Charge) undertaking is when police offer to release you from the police station if you sign certain conditions.
2. A bail hearing is on consent if the crown is willing to agree to release you if you sign certain conditions.
3. A bail hearing is contested if the crown does not want to release you from detention, or you aren't willing to follow the conditions of a consent release.
4. Remand is time spent in custody before your bail hearing.
5. A reverse onus hearing is when you must convince the Justice of the Peace that you should be released. Normally the crown must prove that you should be kept.
6. A significant change in circumstance would be something like having a suitable surety come forward where there wasn't one before.

Yes, you can apply for a bail review.

## Inmate Rights

The following is from the Prisoner Rights section of the Ministry's "Inmate Information Guide." What's written here isn't always the way things are in prison. We know that prisoners are often subject to abuse and neglect on a regular basis by frontline staff. If you're having trouble accessing your rights, you can try contacting the CCU, Ombudsman, Human Rights Legal Support Centre, or prisoner advocacy groups.

See our "Prisoner Resources" section for contact information.

## Correspondence and Mail

On admission, you're given paper and an envelope to send one letter for free. Every week after that you'll get more paper to send two letters for free. If you want to write more than two letters a week, you have to buy extra writing paper, envelopes and stamps through the canteen.

There's no limit on the number of letters you can get but the superintendent might limit the number of letters you can keep in your cell. Extra letters can be placed in your property.

You can't have large packages, books, magazines, stickers, food, or polaroid pictures mailed to you. If you're sent anything with perfume, other odours, or a biohazard (e.g. lipstick) it'll be sealed and put in your property.

The superintendent will refuse to send a letter to a person who you are not allowed to contact (e.g. victims, persons with restraining orders, etc.). Police may be advised if the law or a court order has been violated.

Most letters you send must not be sealed before you put them in the mail collection box. The only letters you can seal are letters to your lawyer, the Ombudsman of Ontario, the Correctional Investigator of Canada, the Information and Privacy Commissioner of Ontario, the Ontario Human Rights Commission, the Human Rights Tribunal of Ontario, the Human Rights Legal Support Centre, the Office of the Independent Police Review Director, the Senior Medical Consultant, the Manager of Corporate Health Care, and the Client Conflict Resolution Unit.

## Mail and Security

Staff can check letters you write or get, and all letters will be tested by a scanner for contraband. The superintendent can refuse to send a letter that affects facility security; threatens, intimidates, harasses anyone; or incites hate/violence. If this happens, staff will tell you why your letter wasn't sent.

If someone sends you a letter that is threatening, contains bad language or incites hate or violence, the letter will be returned to the sender, or in some cases, turned over to the police.

### **Mail Between You & Your Lawyer**

Letters to your lawyer should be sealed in front of a staff member before they're put in the mail collection box. Correspondence from your lawyer won't be read by staff

unless there's reason to believe that the letter poses a security risk or has contraband like paper clips/staples. If the letter needs to be opened, it'll be opened and inspected in front of you and staff.

## **Deaf, Deafened & Hard Of Hearing Inmates**

If you're deaf, deafened or have difficulty hearing, tell staff to arrange accommodations to help you. If you use sign language, the Superintendent can find staff/volunteers who sign to answer your questions, help you with information about trial, parole hearing, misconduct interviews, programming, or to understand what is being communicated to you

Submit an Inmate Request Form to use a TTY phone to make toll free or collect calls to people in the community.

Tell staff if another inmate is deaf, deafened or has hearing difficulties.

## **Diet**

Corrections recognizes that some inmates may require special diets for:

- medical reasons (e.g. allergies, diabetic, heart disease, celiac, etc.)
- spiritual or religious beliefs (e.g. Kosher, Halal, etc.)
- lifestyle choices (e.g. vegetarian, vegan)

During admission, you'll be asked whether you need a special diet for medical, religious or lifestyle reasons. If this hasn't happened, submit an Inmate Request Form with the diet details and why you need it.

## Healthcare Services

Institutions have nurses, mental health nurses, doctors, and psychiatrists. They may also have nurse practitioners, dentists, pharmacists, social workers, psychologists, physiotherapists, chaplains, and Native Liaison Officers who can contribute to your wellbeing. If needed you may be referred to other healthcare providers or specialists. In some cases, medical appointments may be by telemedicine (video).

The information you share with healthcare staff is confidential and is kept in a separate healthcare record from your institution file. Talk to your institution's healthcare manager or senior nurse if you have questions or concerns about your healthcare.

## Medications

Healthcare staff will ask what medications you take, the pharmacy that gave you the medications, and who your doctor is. They'll also contact your pharmacy/doctor to confirm the information. The institution's doctor will review your medication(s) and prescribe based on their assessment.

Nurses give out medication twice a day, either in your cell or on the range. You aren't allowed to share your medication. If someone is pressuring you to, you can ask the nurse to get your medication in a safer way.

Medication that you had with you when you arrived at the institution will be placed in your property and returned to you when you leave.

Speak with healthcare staff to arrange for medication on release.

## Tolerance to Drugs & Risk of Overdose

Your body's tolerance quickly drops even after a few days of not using.

You can ask healthcare staff for a take home naloxone (THN) kit when you're being released. Overdoses are medical emergencies and naloxone can be lifesaving by buying you time until paramedics arrive. It's important to still immediately call 911 because naloxone wears off quickly and someone could still be overdosing.

You can get treatment in an institution for problems with drugs and alcohol. Ask healthcare staff what your options are for individual or group support.

## Treatment Centres

To be sent to a treatment centre you must undergo a special classification process. This lets staff know if you're suitable for treatment or if you need an assessment before going to another institution. Submit an Inmate Request Form to the classification staff. If you want more information, have questions, or want to apply to any treatment programs.

There are currently three treatment centres in Ontario:

### **Algoma Treatment and Remand Centre (Sault Ste. Marie, ON)**



- Offers treatment to men and women for anger management, domestic violence and drug and alcohol abuse

### **Ontario Correctional Institute (OCI) (Brampton, ON)**

- Offers treatment to men and women for criminal thinking, substance abuse, emotion management and sexual offending
- Must have at least six months left in your sentence before discharge

### **St. Lawrence Valley Correctional & Treatment Centre (Brockville, ON)**

- For men with psychiatric needs who would benefit from a secure setting during your assessment and treatment

## **Mental Health**

During admission, healthcare staff will do an assessment that includes a mental health screening. Depending on your needs, a care and/or treatment plan may be designed to support you while you're incarcerated. Submit an Inmate Request Form or talk to staff if you have mental health concerns.

## **Other Healthcare Considerations**

Talk directly to the nurse if you need special considerations for a medical or health-related condition, for example pregnancy. Temporary accommodations can be considered to help you manage.

## Assistive Devices

An assistive device is a device (e.g. wheelchairs, prosthetics, personal oxygen tanks, crutches, canes, walkers, assistive listening devices, continuous positive airway pressure (CPAP) machines, etc.) that's used to help people (primarily people with disabilities) to perform a task (e.g. move, sleep, participate in programming, communicate, read, breathe, hear, see)

To accommodate the needs of inmates with disabilities, inmates with prescribed or approved assistive devices are allowed to keep these while incarcerated (even in General Population, group settings and on transfer) except if there are health and safety concerns.

All assistive devices can be searched as part of regular search procedures. Steps should be taken to make sure that this is done in a way that respects dignity. If needed or appropriate, healthcare staff may be present or requested to help staff do the search.

## Translation Services

Tell staff if you need a translator for your trial, parole hearing, healthcare assessment, misconduct interview, or programming to understand what's being communicated to you. Let staff know if an inmate can't speak or understand English.

For specific information on French Language Services, please see the [French Language Services section](#) of this guide.

## Phone Calls

You can use the unit phones to make calls to cell phones and landlines.

Calls to Legal Aid, the Ombudsman's Office, Human Rights and select ministry-registered inmate support agencies are free. For more information on what pre-approved toll free or local numbers are available, look at the common access list.

Ask staff if a list isn't in your living unit.

Submit an Inmate Request Form to deposit money from your trust account into your phone account. Friends and family can also put money in your trust account that you can move to your phone account.

The first time you access your phone account, you'll have to create a four digit personal identification number (PIN). You'll then be prompted to enter your OTIS number and PIN. At any time and as often as you like, you can change your PIN by submitting an Inmate Request Form.

### **Collect Calls**

You don't necessarily need money in your phone account to make calls. You can call collect to most numbers, even cell phones, if their phone provider allows it. If you're making a collect call, the person you call must agree to accept the charges.

### **Phone Limits**

- 20 minute phone call limit. An automatic voice message tells you when you have one minute left and automatically ends the call

- No 3 way calls
- Must only use your PIN to make calls
- Don't call people you have a no contact order with

Your phone privileges could be suspended or limited if you abuse the phone system.

TTY phones are in all Ontario institutions. A TTY phone is an electronic device that allows persons who are deaf, deafened or hard of hearing and/or who have speech related disabilities to communicate via text over a phone line. Submit an Inmate Request Form to use a TTY phone.

## Visits

With prior approval, family and friends can visit you while you're incarcerated.

Specific visiting hours vary by institution and on or around statutory holidays.

Ask staff if you want information about visiting hours, rules, and identification visitors need to visit you. Provide staff with advance notice (verbal and Inmate Request Form) if your visitor requires disability accommodations.

During regular business hours, you'll be allowed visits from your lawyer, a religious or spiritual leader, a probation officer, a volunteer, community support person and other authorized persons.

If you're not serving a sentence you're allowed two visits a week; if you've been sentenced you're allowed at least one visit a week.

## Voting

Eligible inmates are allowed to vote in federal, provincial, municipal and First Nations Band Council elections. When there's an election, advance notice will be posted in your living unit telling you who may vote and how. If you need disability-related accommodation to help you vote or have any questions, ask staff. It's your responsibility to learn about the candidates.

For municipal elections, only remanded inmates are allowed to vote. For federal and provincial elections, all eligible inmates, whether sentenced or remanded, have the right to vote.

# Lawyers & Self-Representation

Looking for legal clinics? Check out the legal resourcing section.

When you're charged, you have a few ways to navigate the court system:

1. Use Duty Counsel
2. Get a Legal Aid Certificate and retain private counsel
3. Hire a private lawyer out of pocket
4. Represent yourself

## Racism, Ableism & Lawyers

Lawyers can also be responsible for engaging in or supporting ableist and/or racist behaviours. They can also be subjected to racism & ableism themselves by the court processes.

If you're seeking private counsel, it's worth weighing the pros and cons of each person you're considering. It can be validating to have a lawyer who thoroughly understands the systemic injustices that racialized and disabled people face and how those factors can lead to involvement in the criminal legal system. Since racism and ableism occur within systems, it also means that having a lawyer who is racialized or disabled might also be subjected to racism and/or ableism while representing you which could impact case outcomes. Bring this up at your initial meeting: be honest about your concerns and ask how they handle it.

There are many ways racism and ableism can manifest with/around legal representation, some of which include:

- Fewer lawyers that are racialized, disabled, and/or neurodivergent
- Lawyers assuming you want mental health court, diversion, or Gladue court, even when that's not what you want
- Lawyers using your race or disability struggles without your consent to seek a lighter sentence
- White lawyers not understanding the systemic context in which racist behaviour by school staff, employees, and/or police put you in contact with the legal system in the first place
- Lawyers chastising you for resisting police direction that was rooted in racism/ableism instead of denouncing police behaviour
- Few lawyers being trained in ASL, or not having TTY phone systems
- Lawyers assuming what you do/don't understand about the court process, documents and decisions

## Duty Counsel

Duty Counsel are lawyers in the courthouse/video court who can speak on behalf of people who can't afford a lawyer or haven't yet gotten Legal Aid.

Duty Counsel is usually only able to represent you for bail hearings, at set dates, and during Crown Resolutions. They don't run trials or have a vested interest in the outcome of your charges. Their main goal is to ensure your rights aren't violated and keep the court process running smoothly.

If you need a lawyer for trial, you'll need to hire a private lawyer out of your own pocket or secure a Legal Aid certificate to pay for one.

Using duty counsel is a fine choice to run your bail hearing if:

- Your bail is uncontested
- You agree with the proposed release plan
- Your case isn't complicated by immigration status, current/previous bail breaches, or intensely scrutinized, publicly denounced, or politicized charges.

Duty counsel is also fine to use until you're ready to enter a plea or have a judicial pre-trial. Most people in the criminal court systems use duty counsel unless they qualify for a Legal Aid Certificate.

## Legal Aid Ontario (LAO)

**1-800-668-8258; TTY: \*711**

**Monday to Friday 8 am and 5 pm EST (Eastern Standard Time)**

LAO most often provides a "Legal Aid Certificate" to people who are:

- Low income (less than \$22,720/year as a single person), AND
- Likely to serve time in jail, or are already in jail because you were denied bail

A Legal Aid Certificate can be used to secure a lawyer of your choosing who accepts Legal Aid. You must choose your Legal Aid lawyer very carefully because a lawyer can only be changed for very limited reasons. Not liking what they say or not getting along with them will not be a good enough reason to have Legal Aid change your lawyer.

If you're denied, talk to Duty Counsel about next steps and/or to ask for a review.



## Private Lawyers

Private counsel will typically take slightly more interest in your case and be willing to argue for better bail conditions.

If you don't qualify for Legal Aid, you can expect to pay a private lawyer anywhere between \$500-\$2000 for a bail hearing, depending on who they are and how complicated it is.

A lawyer charges for each appearance and task: if you're paying out of pocket, ask them if appearing for yourself can help save you money. If you have retained a private lawyer via Legal Aid, all costs will be covered.

Lawyers can have hundreds of clients at the same time. They're not known for explaining information thoroughly or in accessible ways. If you don't understand something your lawyer tells you or you don't understand the status of your case, ask them to explain it thoroughly. This is your right.

It can be common for lawyers to delay thoroughly reading your case until the week before trial. This is because sometimes the Crown will offer a last-minute deal and it saves your lawyer work. Trial dates can also sometimes be rescheduled at the very last minute. Lawyers may try and pressure people into pleading out their charges because that's easier for them.

Always remember that your lawyer works for you: you don't have to plea just because they're recommending it.

## Self-Representation & Notes on Lawyers

The legal system is rigid. You're not going to have as much control over your case as you want. Courts have a lot of rules e.g. when you can speak, who you can speak to, what can be said. You'll need to learn these - and generally be able to follow them - to successfully self-represent yourself.

It's difficult, but it can be done; you're entitled to pursue this route if you want. You're the best person to know your case and the facts surrounding it – in that way, you may already have an advantage over a lawyer.

Self-representation can also be essential to representing your own needs or beliefs if you can't find a lawyer willing or able to represent you in the way that you want to be represented. For example, if you're Indigenous and being charged with trespassing on your own Nation's territory and don't want to argue your innocence under colonial law.

### Resources to Self-Represent

You can request these resources be printed and sent to you by friends, family, or prisoner support groups if needed.

#### **1. National Self-Represented Litigants Project (NSRLP)**

The NSRLP has resources and information about representing yourself in court in Canada. They also have a resource guide for people with disabilities who are representing themselves in court and seeking accommodations within the justice system.

You can request printed resources by mailing:

NSRLP Faculty of Law-University of Windsor

401 Sunset Avenue Windsor, Ontario

N9B 3P4

**2. Canadian Judicial Council: Criminal Law Handbook for Self-  
Represented Accused 613-288-1566**

The Canadian Judicial Council has a handbook for people who are accused of a crime and representing themselves in a Canadian court. You can contact them at 613-288-1566 to request a printed resource.

# Arrest & Bail Court

When you get charged with a crime in Ontario, one of these will happen:

1. The officer may let you go if you sign an “undertaking,” an agreement to follow certain rules and with an order to appear in court
2. The officer may hold you at the police station for a bail hearing

Police sometimes want you to agree to release conditions that are extreme, unfair, or rules that you just can’t follow. You can refuse to agree and argue against them in court. If you do, the police will hold you for a bail hearing.

A bail hearing is an appearance before a court to decide whether to release you or remand you to custody until the charges are resolved. You have the right to appear before a court within 24 hours of your arrest, but if there were a large number of arrests, or you’re arrested on a weekend where court only runs Monday to Friday, this might not be possible.

Appearing in court doesn’t guarantee that the court will have time for your bail hearing the same day. Sometimes it isn’t in your best interest to have a quick bail hearing so you can prepare properly. In either case, you might get temporarily sent back to a detention centre to await your bail hearing.

Before the hearing you’ll have a chance to speak with a lawyer (your own or duty counsel). It can be beneficial to let your lawyer know whether you are Indigenous, Metis, or Inuit. Sometimes they can make special arguments or access additional programs to have you released from jail.

Many bail hearings in Ontario are now being done by video court, unless requested otherwise by you/your lawyer. Video court means you're taken to a room at the police station set up for a video call with the court.

## Racism & Ableism in the Bail Process

Disabled and racialized people are less likely to be given a warning from police or released from the police station, which makes them more likely to appear in bail court.

In bail court, racialized and disabled people are less likely to successfully make bail than those who are white or not disabled. When you do make bail, you're more likely to be subject to harsher bail conditions, some of which may set you up for a breach of conditions.

A breach of bail will result in additional charges and a section 524 Reverse Onus Bail Hearing, where the Crown withdraws your previous bail and you must now prove to the court why you should be released, versus the first time when the court had to prove why you should be kept.

Section 524 Bail Hearings can be hard to win for anyone - but more so if you're racialized or disabled. This makes it especially important to both prepare properly for a bail hearing and try your best to avoid being caught breaching bail.

Ways that racism & ableism can look like during the bail process:

- Being remanded to custody while you await a psychiatric institution bed
- A Justice of the Peace (JP) not allowing you to be released to a responsible guardian based on something arbitrary e.g. it was a grandparent instead of a parent who showed up to bail you out
- A JP or lawyer saying something overtly or covertly ableist or racist during a hearing
- A higher chance of being remanded to prison, based on conscious or unconscious dehumanization of racialized or disabled people
- A JP, judge, or court staff assuming your disability and how it impacts you, instead of asking you
- Bail conditions that restrict the use of alcohol or drugs, even when your charges have nothing to do with alcohol or drugs - in particular if you are Indigenous

## The Bail Hearing

At the bail hearing, the Crown (which represents the government) will read the allegations and some of the information surrounding the charges. Sometimes the Crown may call a witness to the stand— usually an investigating officer.

The information presented by the Crown only represents the police's version of what happened. It may not be accurate or true, but it doesn't matter at this point. A bail hearing is not an opportunity to argue against your charges – it's only a hearing to see if you will be kept in jail or not while you defend yourself against the charges.

In most cases, the Crown must successfully argue why you shouldn't be released on bail. There's limited reasons that the court can order you to remain in jail. They include:

1. Primary Grounds: to secure your presence at future court dates
2. Secondary Grounds: to maintain the safety of others or prevent another offense
3. Tertiary Grounds: to maintain the integrity of the court

Sometimes YOU must successfully argue why you should be let out of jail. This is called a "reverse onus" bail hearing. It usually happens with serious charges or if your charges involve having breached other bail conditions.

If the court doesn't have time to hear your bail hearing right away, they can send you back to detention until they have time. This is called an "adjournment". The court cannot adjourn you longer than 3 days without your consent.

## Sureties & Bail Plans

Your lawyer may have to propose a bail plan to the court. This includes rules that you would follow while on bail (e.g. a curfew, avoiding a location or communicating with a person). It may also include having a "responsible person" sign a document agreeing to supervise and report you if needed.

A surety is one step beyond that: a responsible person – a family member, partner, or close friend– who promises the court that they will supervise you outside of jail *and* contact the police if they believe you're breaking the rules. Sometimes you must live with your surety, but not always. A surety will also promise an amount of money to the court that they may need to pay if you break the rules. In most cases, the money is not needed up front – it's just a promise to pay and there are very explicit circumstances in which the court can collect the funds.

Bail hearings can be “on consent” or “contested”.

A bail hearing on consent means that the Crown has agreed to let you be released from jail if you are willing to follow the rules that you all agree on. In court this means the Crown and your lawyer/duty counsel don't argue about your release. Instead they propose the agreed terms to the court. It's uncommon for a judge or Justice of the Peace (JP) to refuse a joint position between your lawyer and the Crown.

A contested bail hearing is where the Crown and your lawyer argue before a judge or JP about your release because they could not come to an agreement. Contested hearings often take place if you have breached your conditions, if you're refusing to follow one of the bail conditions being requested by the Crown or commended by police. The judge or JP will make the final decision after arguments.

Contested hearings take up more court time and often include the use of sureties. If you're having a contested bail hearing you are more likely to be held in a local detention centre until the court and lawyer can find common time. This can be a few days to a few weeks, depending on the situation.



## Help with Bail

People who don't have the financial or social support needed to meet bail requirements may be able to access a bail supervision and verification program. For example, if you don't have someone to be your surety, a caseworker may be able to supervise you while on bail.

Bail programs aren't available everywhere in the province. They will also differ in the level of support they're willing to provide based on your area. In most cases, you'll be required to check in once a week with your caseworker to show that you're meeting your bail conditions. Other requirements will depend on your case.

If you'd like to access a bail supervision program, let your lawyer or duty counsel know. They will contact the program, and a caseworker will interview you to determine eligibility.

Bail programs are usually only for people who aren't charged with violent crimes and who do not have anyone they can ask to be their surety.

If you have used a bail program in the past and didn't follow the rules or check-in as necessary, they might not agree to supervise you.

The bail program will report you to the police if they find out you're not following the conditions.

Bail programs are often contracted through regional branches of organizations like the John Howard Society, the Elizabeth Fry Society, and St. Leonard's Community Services. Indigenous peoples may also be able to access caseworkers through the local Friendship Centre.

## Bail Or Remand

A Justice of the Peace (JP) will consider your charges, record, and your proposed bail plan. They may interview your surety if you have one. The JP will then decide whether to release you on bail or deny you bail (remand).

A JP is a person who can make decisions on behalf of the court, but they aren't a judge. A JP is usually just a community member, and they can be subject to their own racist and/or ableist beliefs.

If you're denied bail you'll be brought to a local detention facility.

You can apply for a "bail review" if you/your lawyer believe there was an error of law or there's been a significant change in circumstances e.g. if someone has now agreed to be a surety.

### **1. Released to Community**

If you're released on bail, there'll be conditions to follow. If you're caught breaking conditions, you can be put back in jail. It's harder to be released if you've broken the rules of your bail before, even if it was years ago.

There will be many court dates in the future that you must attend. You can be arrested again if you miss any court dates.

### **2. Remand**

If you aren't released after a bail hearing you'll be remanded to custody (jail) as you work your way through the court process.

Being remanded can be very hard emotionally. It can cut you off from your friends and family. Jail can be a hard place to exist safely. Being racialized or disabled can put you more at risk of abuse from corrections staff.

You'll be able to hold a new bail hearing in 3 months but only if something has substantially changed e.g. you find a surety/release program. You can also appeal the bail decision to a higher court if there was an error of law.

## Bail Conditions

Think about the release conditions you'd be okay with. You're allowed to refuse to sign the bail conditions that the court proposes, but this means you'll be taken to pre-trial detention.

Jail isn't a place most people want to be, but there can be worse things –only you are in the position to weigh the pros and cons. A lawyer will always argue that you should get out of jail, but it's your decision.

Sometimes it might be worth it to stay in pre-trial detention. This is especially so if you intend to plead guilty and can do some jail math to minimize your actual time in prison.

## Deadtime & Statutory Release

Every day you spend in pre-trial detention (before you plead or are found guilty) is worth up to 1.5 days, though additional credit isn't guaranteed.

E.g. The Crown is asking for 30 days in jail. You might only have to serve 20 days to be let out with “time served”. In some cases where the prison conditions are particularly adverse, additional credit may be granted.

Additionally, statutory release means you’re released after serving 2/3rds of your sentence. In the example above, if you plead guilty to the charge asking for 30 days having spent 10 days in pre-trial detention, you’d likely be released from the sentencing court or shortly after.

There’s also downsides to using the system this way: time-and-a-half isn’t guaranteed, and you’re building a bigger criminal record. Once you have a record, the Crown will ask for more time if you’re ever charged again.

## When to Prepare a Strong Bail Plan

A bail hearing is like a mini-trial about whether to release you from custody while you deal with the accusations against you. You’ll have a bail hearing if police refuse to release you with a warning or from the station.

Most bail hearings (80%) are run by duty counsel, but hiring a private lawyer to run a strong bail plan can be helpful if you’re at higher risk of being denied bail e.g. if you’re

- Black, Indigenous or otherwise racialized
- Disabled and/or neurodivergent

- If the court knows you use substances
- Facing multiple or especially serious charges e.g. weapons
- If your charge(s) are highly polarized in mainstream media

Because courts remand these populations to prison the most often, hiring a private lawyer can give you the best chance of pre-trial release and overall reduction of harm.

Being remanded to pre-trial custody will have a huge impact on the outcome of your charges. Because jail conditions are so poor, it's also common to plea out while you're remanded to custody, whether you're guilty or not, just so you can be released.

Jail also regularly exposes people to more violence/trauma that can lead to additional charges. If charge(s) make it to a jury trial, it's often easier for a jury to see you as guilty if you've already spent time in jail.

While preparing to run a strong bail hearing may mean you spend a few days in a detention centre, if successful, it means you won't need to spend several months or more in pre-trial detention.

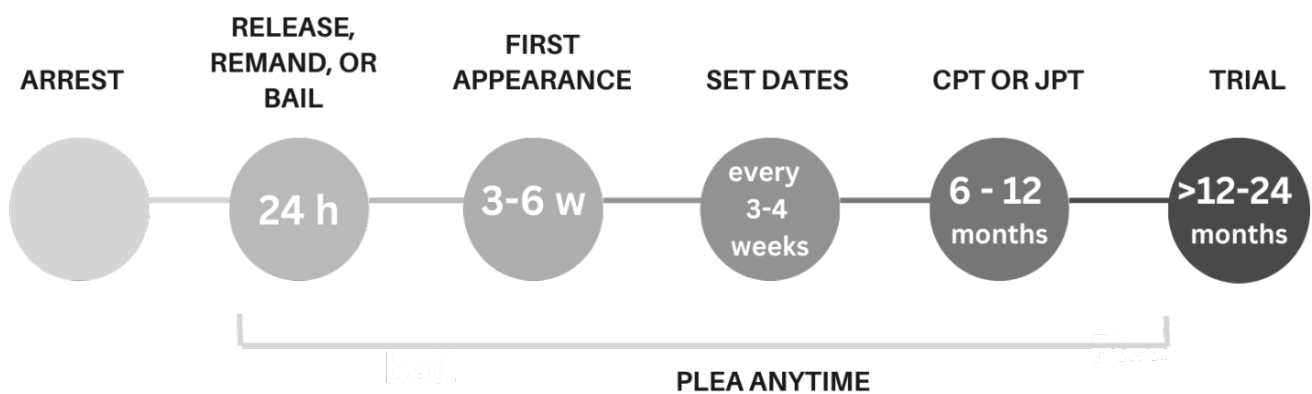
For more in-depth information on bail hearings and bail plans, see our Making Bail section.

# Court Dates

Whether you're facing charges while detained in jail or released on bail, the court dates and case progression are similar. The following is a brief plain-language breakdown of what each step is.

## COURT PROCESS TIMELINE

Timeline can vary based on the charges, evidence, and whether you are in custody.



## Fitness Hearing

A fitness hearing might be requested by the judge, your lawyer, or the Crown if they believe you aren't currently capable of facing the charges against you e.g. if they believe you're in a state of crisis, psychosis, or are unable to understand what's happening in the court to make decisions.

If a fitness hearing is ordered you'll be assessed by a psychiatrist, who will then provide their opinion to the court on whether you're "fit" to proceed with the charges against you.

A judge will make a final decision on whether you'll continue facing your charges, or whether to force you into treatment. If a judge makes a treatment order against you, doctors can treat you without your consent, as they see fit, including forced medication.

## First Appearance

This is your first appearance in court aside from a bail hearing. You'll likely sit around for at least half a day, receive Crown screening and initial disclosure. Crown screening lays out what sentence the Crown wants if you plead guilty.

If you've been screened for diversion, you'll likely learn of it on this date. Diversion is a process alternative to court, outside of the criminal legal system. When completed, you'll have no criminal record. If you're not screened for diversion by your first appearance, you may qualify through Crown resolution.

You don't need a lawyer for your first appearance. If you're low-income you can use duty counsel to speak to the court on your behalf at no cost. If you don't qualify for duty counsel, you can represent yourself at first appearance.

If you're low income AND your Crown screening says the Crown is asking for jail time apply to Legal Aid right away. Try not to panic: the outcome is usually very different from what the Crown is seeking.

You should also apply to Legal Aid If you're low-income and intend to go to trial, but the Crown isn't asking for jail. A judge or duty counsel may be able to order a Legal

Aid Certificate for you so that you have representation at trial, but you'll need an initial rejection letter for them to do this.

## Set Dates

Set Dates are a series of ongoing court dates about 3-4 weeks apart that you need to attend while you await additional disclosure (evidence against you), decide on a lawyer, and apply to Legal Aid. Count on these taking at least half the day as well. No lawyer is needed at this early stage either.

## Crown Resolution

A meeting that you (if you're representing yourself) or your lawyer (either duty or private counsel) have with the Crown to see if a plea deal can be reached. After this, you can either set a date to plead guilty and be sentenced, or continue to pre-trial proceedings.

If you're retaining a private lawyer out-of-pocket, or through Legal Aid, it's ideal to have them by this meeting. If you intend to self-represent, you can attend your own Crown Resolution.

## To Enter A Plea

If you agree on a deal with the Crown, a date will be set for you to enter a plea before a judge or Justice of the Peace.

The plea you enter into can be a "joint position" or a contested sentencing. Both are an agreement between all parties about the facts you are admitting to and on which



charges. A joint position means all parties also agree about the punishment. A contested sentence means both parties will argue before the court about what an appropriate punishment is.

While unusual, it's possible for a Judge to override a joint position between your lawyer and the Crown and sentence you to what they see fit.

Once you enter a plea of guilt, you're giving up your right to a trial, even if the judge's decision isn't what you agreed on. Your plea can only be changed in very explicit circumstances but is very unlikely if you have a lawyer representing you.

The next step after entering a plea is "sentencing".

## Judicial (JPT) Or Crown Pre-Trial (CPT)

A JPT or CPT is between you OR your lawyer and the Crown in front of a judge about the strengths/weaknesses of taking the case to trial. The judge will often encourage both parties to settle to avoid using up the court's time.

If an agreement can't be reached, the discussion becomes finalizing trial details e.g. number of witnesses/days the trial will take and setting dates with the trial coordinator. You/your lawyer should be involved by this stage.

## Trial

This is the process of testing the charges against you in front of a judge. You'll need to be there if you have a lawyer or are defending yourself. Trials have their own

special procedures and rules that you'll need to learn and follow if you are representing yourself.

You're able to enter into a plea up to and during your trial. Oftentimes the Crown will make one final offer in the days before trial or even on day-of.

Once the trial starts, any offers the Crown previously made might be taken back, but you're still free to try and negotiate a deal right up until a verdict (jury trial) or finding (judge-only trial) has been made.

## Sentencing Reports

### **1. A Pre-Sentence Report**

is a document that a probation officer prepares for the court. They may interview you, your friends, family, employer, or other people in your life and look at other instances of criminal allegations and outcomes. It's meant to offer considerations for the judge when they're deciding what sentence to give you. They take between 2 weeks to 6 months to prepare and are mandatory if the judge is considering sentencing you to prison.

### **2. Impact of Race and Culture Assessments (IRCAs)**

IRCAs or social context reports are a newer tool which courts have started to consider, explicitly for sentencing racialized individuals. It's usually written by a clinical social worker and meant to provide specific insight and context into how racism and prejudice has contributed to involvement in the CLS.

Legal Aid funds these reports if you are racialized, a youth facing a custodial sentence, or an adult facing a federal (2 years or more) sentence.

There have been recent critiques of these reports, including the length of time required to wait for one to be prepared (which is often further time on precarious bail conditions or in detention), and the cost– between \$4000 - \$6000 if you don't qualify for Legal Aid.

### **3. Medical Reports**

can be used in the sentencing process if any medical condition or disability should be considered. It's prepared by a medical professional. A judge can order that you be in custody for up to 30 days while the report is prepared.

## **Sentencing**

A sentencing hearing is when a judge hears your/your lawyer's and the Crown's arguments on what punishment you should receive. The arguments are usually based on facts of the case or similar cases.

If you allow them, your lawyer can also make arguments around your life circumstances e.g. you grew up in the foster system or have a mental health issue. It's up to you whether you want this to be part of the sentencing argument. Because court proceedings are public record, disclosing facts makes them available to the general public.

The judge will also consider any reports or character letters submitted.

If you're sentenced to jail, it's likely you'll be immediately taken into custody unless there's a successful argument from your lawyer as to why you shouldn't be.

If you have spent time in detention before sentencing, the judge's decision will also include a decision on how much time you have already served, and state that information for the record. The calculation for "deadtime" ( time in custody before trial) is usually 1.5-2 days for each pre-trial day. In some cases, this means you could be released from the courthouse and can return to pick up your belongings from prison at another time.

## Racism & Ableism

### During Trials & Sentencing

Other than police interactions and bail hearings, trials and sentencing are two areas of the court process where racism and ableism will have the most impact on you.

The impacts of racism and ableism in these areas can have long lasting and more strenuous impacts. Some brief examples are:

- Having judges or jury who are white, abled, wealthy, and neurotypical may have limited empathy/understanding for you which consciously or unconsciously creates dehumanizing bias, making them care less if they make the wrong decision. Having a judge/jury of people really different from you could lead to a higher chance of being found guilty.
- In sentencing, judges may favour an extended or harsher sentence if you're Black, Brown, or Indigenous. This means you may get prison time or a longer period of probation with stricter conditions.

- Ableist judges may be more inclined to sentence you to a community treatment order, which is an indeterminate sentence that subjects you to forced medicalization and drug treatment
- Judges may be more likely to dismiss your lawyer's arguments around whether or not evidence should be admitted to the court during a trial or allow evidence from an improper search.

# Special Court Processes

Different processes may be available if you're Indigenous, have addictions, or mental illness AND have minor charges.

While some receive special treatment in the short-term, it also villainizes those with more substantial charges or more severe mental health issues, leaving people open to worse punishment without special support or consideration when it comes to race, disability, or neurodivergence.

If you enter a special court or diversion process because of your mental health and breach it— even if your breach is because of mental health— you're likely to become one of the people who gets punished more severely. In some cases, the use of mental health courts or diversion can leave you subjected to long-term supervised release where there may be conditions like taking medication or attending programming.

Sometimes, those within the criminal legal system (CLS) and the public also use the existence of such systems to justify the over-incarceration and collective punishment of Black, Brown, Indigenous and disabled peoples without ever addressing the systemic roots of those issues.

## Diversion

Diversion is a type of extrajudicial measure (EJM) when criminal charges are dealt with outside of a courtroom; there's no guilty plea or trial. There's diversion programs for adults, youth, and Indigenous peoples.

Eligibility is usually based on your criminal record, the seriousness of your charges, and the cost of going to trial compared to the seriousness of your offense.

If you qualify, you're usually offered it at your first appearance, but sometimes you or your lawyer can try to convince the Crown to offer you diversion during resolution meetings.

Diversion programs are individualized but usually include one or more:

- community service
- a charitable donation
- counselling e.g. for anger management, addiction or mental health
- a letter of apology

When successfully completed, diversion results in the withdrawal of charges against you. If you don't complete your responsibilities, your charges can be brought back to court.

## Mental Health Diversion (MHD)

MHD is difficult to get and usually only offered to those with substantial mental health issues that caused "a break in reality" and whose mental health is part of the reason they committed a criminalized act. It's voluntary.

It often forces you to get supervised treatment through a community treatment order or in hospital. You'd still need to attend some scheduled court dates, but if you

qualify, you won't have to plead guilty or go to trial. Talk to your lawyer, court worker, or duty counsel to apply.

Some people prefer the regular court process because it's usually faster and doesn't risk being hospitalized.

## Drug Treatment Court (DTC)

DTC is a program for people who struggle with drug addiction. The idea is that if you treat your addiction, you're less likely to commit a crime again.

Unlike diversion programs, DTC usually requires a guilty plea. If you're accepted, you're placed on bail while you complete the program. If you relapse while on the program, you may be sent to jail. After completing the program, you'll be put on probation. If you breach your conditions you may get additional charges and face jail time.

DTC is for people who are:

1. charged with non-violent offences
2. currently use street drugs e.g. opiates, cocaine, methamphetamine,
3. are charged with a crime primarily because of their addiction

The DTC program is not for alcohol addiction. There are other disqualifying factors, such as high level drug dealing, DUIs, break and enters, and harming someone under the age of 18.



While in DTC, you must:

- participate in treatment programming
- go to court regularly, usually at least once a week
- try your best to stay off drugs and be honest about using
- try not to commit more crimes or breach your bail
- continue to attend court for one to three years

DTC usually takes a minimum of one year to complete, but it can also take much longer. After you graduate from DTC, the judge will sentence you to a period of probation.

Talk to your lawyer or duty counsel to apply.

## Gladue Principles & Gladue Court

Gladue Court, also known as Indigenous People's Court, is for Métis, First Nations, or Inuit peoples who have been charged with a criminal offense.

Gladue Courts deal with all criminal offenses but they only handle bail and sentencing hearings, not trials or preliminary hearings.

Gladue Courts often try to incorporate Indigenous cultural practices (e.g. Elders and/or Knowledge Keepers starting with a smudge, song, and/or prayer) and understandings of justice but are ultimately still Canadian courts that apply Canadian law.

**Gladue court is different, but similar, to Gladue Principles.**

Gladue Principles are a set of legal principles that aim to address the over-incarceration of Indigenous peoples in so-called Canada. ALL courts must apply Gladue Principles during bail and sentencing hearings, whether or not it's taking place within Gladue Court.

Gladue Principles mean that ALL courts must take into account:

- your Indigeneity
- the impact and history of systemic discrimination against Indigenous people by Canada and the criminal justice system

All alternatives to detention or jail must be considered before a detention or a jail sentence is given.

Sometimes a Gladue Report will need to be prepared. Legal Aid Ontario can connect you to a list of publicly funded Gladue report-writing programs.

In the Hamilton area, you can access letters and reports through Aboriginal Legal Services and the Ontario Native Women's Association. Some Nations also provide Gladue workers to members.

Speak to an Indigenous court worker, your lawyer, or Duty Counsel to find out more about Gladue Court.

# Custody

You can be held in custody before being found guilty. This is called being remanded into pre-trial detention. You can also be held in custody as a punishment for a crime – this is called serving a custodial sentence.

Adult institutions are usually separated by either gender binary of "male" or "female." If you're gender diverse or trans and identify that to staff, you may be placed in segregation within the institution you most closely align with.

Sometimes your lawyer or supporters must advocate to have you transferred to a facility that aligns with your gender, particularly if you haven't had any gender-affirming surgeries or medications.

If you're gender diverse or trans (especially) you can still face a lot of stigma and harassment in the criminal legal system, especially in custody.

## Racism & Ableism in Custody

Black, Brown, Indigenous, Disabled, and/or neurodivergent people are several times more likely to end up in custody, be sentenced to longer prison terms, and less likely to receive their release on time compared to white, abled, and neurotypical people.

E.g. Brain injured people are 14x more likely to get a serious criminal charge and 12x less likely to receive a discretionary release or discharge. Approx. 50% of charged youth have a documented history of brain injuries.

Here are other ways racialized/disabled people face discrimination:

- Getting a higher "risk score" in custody which gives you less access to programming, impacting the likelihood of successful parole or release. Scores are based on things like postal codes with assumed gang involvement, or Eurocentric, neurotypical understandings of body language and behaviour
- Few barrier-free access facilities (e.g. halfway houses), meaning those who need barrier-free access must sometimes rely on other prisoners to access parts of the prison, or delayed release if beds in accessible parole institutions are full
- Subjected to dehumanizing language from correctional staff
- More likely to have your behaviour seen as problematic, or be seen as an instigator, resulting in institutional charges or segregation
- People with mental health issues are most likely to spend extended periods of time in segregation without consent, often for stated reasons of "safety"

## Prisons Causing Disability

An often-overlooked issue is that being remanded or sentenced to custody can agitate existing disabilities, create or catalyze new disabilities, shorten life expectancy, or kill you. This is by design and happens through the mental/emotional stressors, and the facility's physical conditions. Prisons are *meant* to warehouse and disable individuals.

Below are some of the ways detention centres and prisons create or catalyze disabilities and cause death through physical conditions:

- Poor air quality and mould can cause severe respiratory issues or infections, sometimes leading to death
- Poor food quality can agitate/cause diabetes, obesity, malnutrition, GI-complications, and worsen cardiovascular health & mental health
- A lack outdoor time and exercise worsens physical and mental health
- A lack of opportunities to develop or update skills ensures that you're even less equipped to navigate the world than before you entered.

## Being Trans in Custody

While the Ontario Human Rights Code is supposed to guarantee the following rights to transgender people in the criminal legal system, police and prisons, facilities and staff don't always follow the guidelines. You or others may need to advocate for your own rights. Trans people continue to face a lot of discrimination and harassment within the criminal legal system.

If you're a trans person who is arrested, you have the following rights under the Ontario Human Rights Code:

1. The right to self-identify your gender, regardless of what any legal documents say, even if you're admitted under a different gender
2. The right to be referred by your chosen pronouns, except in rare situations where your legal name is required for legal identification.

3. The right to choose the gender of the person searching you, including someone of different genders searching different parts of your body.
4. The right to be searched in a private area, including any prosthetics
5. Conversations about your gender identity/expression will be private.
6. The right not to have information about your gender identity or expression shared with anyone to whom it is irrelevant or who is not directly involved with you
7. If the facility isolates you, they must provide access to programming and social opportunities.
8. The right to keep personal items, including prosthetics, that are necessary for your gender expression – both while imprisoned and when being transferred
9. The right to individual and private access to showers and toilets

If these rights are violated you can file a complaint with the Client Conflict Resolution Unit (CCRU) 1-866-535- 0019 Monday to Friday 9 am to 4 pm

## Other Entitlements

People who have a disability are also entitled to accessibility.

Indigenous people have the right to access some ceremonies, such as smudging, while in detention, jail, or prison. This is typically offered through the Native Liason Officer (NILO) at each facility.

## A Special Note on New Year's Eve

If you're ever locked up on New Year's Eve and hear or see a bunch of fireworks outside your prison walls – they're there for you!

Every year on December 31 prison abolitionists, prison rights activists, anarchists, friends, family, and people of all kinds attend prisons throughout the world to set off fireworks & remind those inside that you're not alone.

There are so many prisons it's impossible to do all of them every year but spread the word if you're ever inside during one of these demonstrations.

If you bang on the walls & bedframes, others in the facility will know something is happening too – and if you bang on the windows or wave in front of them the people outside will be able to hear or see you.

Noise demos don't just happen on New Years – they also sometimes happen when people who are abolitionists are arrested or put in prison to show solidarity, and remind them they aren't alone. They can also happen to show solidarity with prisoners inside who are engaging in hunger strikes, or facing especially difficult times like during COVID.

# Prisoner Supports

The following are a range of legal, advocacy & crisis supports that prisoners should be able to access for free on facility phones or by mail.

If a number isn't working, it may be because of the phone system. It's sometimes possible to arrange a private call through the social worker or nurse or ask for the number to be put on the "common access" list.

## Legal Supports

**Aboriginal Legal Services Toronto (ALST)** 1-844-633-2886 ALST provides services to low-income Aboriginal people in Toronto. Services include: Aboriginal Court workers; Gladue reports and aftercare; poverty law services (including police complaints); a criminal diversion program for adults and youth; an alternative process for child welfare cases; test cases and law reform. ALST is trans-positive and Two Spirit-friendly. 416-408-3967

### **ARCH Disability Law Centre**

1-866-482-2724; 1-866-482-2728 (TTY)

Disability Rights Law legal clinic for disabled folks in Ontario. They provide a range of legal services, including summary legal advice, basic legal information, and referrals.

### **Black Legal Action Centre (BLAC)** 1-877-736-9406

BLAC provides legal support to low-income Black folks in Ontario dealing with individual and/or systemic anti-Black Racism.



### **Human Rights Legal Support Centre (HRLSC)**

1-866-625-5179

HRLSC provides human rights legal services to individuals in Ontario who have experienced discrimination or a violation under the Human Rights Code. There is an option that prioritizes calls from prisoners.

### **Law Society of Ontario**

1-855-947-5255 Monday to Friday, 9am to 5pm

Get 30 minutes of free legal advice, or referrals for a lawyer.

### **Legal Aid Ontario (LAO)**

Obtain a Legal Aid Certificate which will cover the costs of a private lawyer. If you're in detention or jail, speak with the Legal Aid worker at your facility.

### **Muslim Legal Support Centre (MLSC)**

call collect 416-350-2914

MLSC is a non-profit organization that defends Muslims' rights in Ontario and connects people to culturally-informed and accessible legal services. Provides free legal services, including legal advice and education (including criminal law), referrals, test case litigation and law reform.

### **Ontario Human Rights Commission (OHRC)**

1-800-387-9080; 1-800-308-5561 (TTY)

The OHRC administers the Ontario Human Rights Act. If you believe you've been discriminated against under one of the protected grounds, you can file a complaint with the OHRC, who will investigate it.

## **Ontario Legal Information Centre (OLIC)**

1-844-343-7462 toll free

OLIC offers a free 30-minute meeting in English or French with a lawyer to anyone in Ontario by phone or in person at their Ottawa office. They can provide legal information in any legal topic & referrals to services.

## **Prisoner Legal Supports** call collect 613-894-HELP (4357)

A prisoner legal support line for human rights, internal complaints, healthcare complaints or Charter challenges. Call Mondays 1pm-5pm EST.

## **Legal Support for Indigenous Peoples**

### **Aboriginal Legal Services Toronto (ALST)**

1-844-633-2886

### **Community Legal Assistance Sarnia**

519-332-8055; 1-888-916-2527

Community Legal Assistance Sarnia provides free legal services for people with low incomes in Sarnia-Lambton, Aamjiwnaang, Bkejwanong (Walpole Island), Kettle and Stony Point, including Baamsedaa “Let’s Walk Together” program which provides referrals and support for Indigenous peoples.

### **Keewaytinok Native Legal Services** 705-336-2981

KNLSC is a community legal clinic in the Moosonee/James Bay area.

**Manitoulin Legal Clinic 705-368-3333**

The Manitoulin Legal clinic is located on Aundeck Omni Kaning First Nation and serves Indigenous people in the District of Manitoulin.

**Nishnawbe-Aski Legal Services (NALSC) 1-800-465-5581**

NALSC provides legal services to Indigenous peoples living in the Nishnawbe-Aski region, with offices in Thunder Bay, Timmins, Sioux Lookout, and Kenora.

Community Legal Workers with NAN speak the languages of the communities they serve: English, Cree, Ojibway, Oji-Cree and can help with legal advice, Legal Aid Certificates, and court support.

**Northwest Community Legal Clinic**

The NWCLC serves low income residents of the Kenora and Rainy River Districts from three offices located in Fort Frances, Kenora, and Atikokan. They can help with areas of workplace and housing law, obtaining ID's or accessing supports, and legal advice on simple criminal matters. Call your local office.

- **Fort Frances** 807-274-5327 or Toll-free: 1-800-799-2485 206  
Scott Street Fort Frances, ON P9A 1G7
- **Kenora** 807- 468-8888 or Toll-free: 1-800-403-4757 Suite 6-  
308 Second St. S. Kenora, ON P9N 1G4
- **Atikokan** 807-597-2811 101  
Main St. W. PO Box 1676 Atikokan ON P0T 1C0

**Ontario Federation of Indigenous Friendship Centres (OFIFC)** 416-956-7575 or  
1-800-772-9291

There are 27 Indigenous Friendship Centres across the province. They provide services for children and youth, education, culture, healing, justice and health. Their justice services include court worker programs, community justice programs and Gladue report writers.

### **YÉN:TENE (Hamilton Community Legal Clinic)**

289-680-4544 | 905-527-4572

YÉN:TENE (you and I will go there together) improves access to justice & provides culturally respectful & appropriate legal services for Indigenous people in Hamilton & surrounding areas

## **Complaints About Mistreatment**

The following organizations are meant to address mistreatment within the legal system, but they often don't provide the results people need or want. See our section "We Keep Us Safe" for more ideas.

### **Internal Complaint Process**

You can submit a written complaint to the superintendent by filling out an Inmate Request Form. The supervisor on duty will talk to you on behalf of the superintendent. If you are not satisfied with the response, you may ask to speak with the superintendent or deputy superintendent.

If you're still unsatisfied, you can write to a senior ministry official including the assistant deputy minister, the deputy solicitor general and/or the solicitor general to ask for further review.

These still may not resolve the situation in the way you'd like. Next steps include external complaint processes, such as contacting the Ombudsman, or organizing with others to build power and demand a resolution.

**Ombudsman Ontario** 1-800-263-1830 TTY: 1-866-411-4211

Investigates prisoner complaints of detention centres & prisons

**Client Conflict Resolution Unit** 1-866-535-0019

If your human rights have been violated while in detention, CCRU will document, investigate and try to mediate it.

**Office of the Independent Police Review Director (OIPRD)**

1-877-411-4773 | TTY: 1-877-414-4773

OIPRD will take written complaints about municipal or provincial police e.g. Hamilton Police or Ontario Provincial Police. Facilities are supposed to have a green booklet with a stamped and addressed envelope to file a complaint with. You should be able to access it by asking prison staff.

## **First Nations Police**

You can file a complaint against the First Nations Police in person or by phone or mail. The complaint must be filed with the First Nations Police Service's Chief of Police where the Constable's employed. If you disagree with the Chief of Police's decision, you can complain to the Band Council. Reach out to a prisoner/legal support project like DJNO's Prison Project or submit an Inmate Request Form to get the station's address.

## **Crisis Support Lines**

These are toll-free lines that should be accessible from detention facilities; they're open to the public but aren't specifically for prisoners. Please note: some support lines may notify prison staff if they're concerned about your/others' safety, and you may get put in segregation as a result.

### **Assaulted Women's Line 1-866-863-0511**

24/7 support for women who have been assaulted

### **Connex 1-866-531-2600**

Provides free, 24-hour health support across Ontario, including mental health information and support, listening, and education around mental health, gambling, addictions, and drug use.

### **Hope for Wellness Helpline 1-855-242-3310 (24/7 support)**

Available to all Indigenous people across "canada." Request support in English, Cree, Anishinaabemowin/Ojibway, and Inuktitut. Call to find out when a language-speaker will be available.

**Métis Nation of Ontario's (MNO) — Healing and Wellness**

24/7 mental health & addictions crisis line. 1-877-767-7572

**Missing & Murdered Indigenous Women and Girls Crisis Line**

An independent, national free support line for anyone impacted by MMIW. Available

24/7. 1-844-413-6649

**National Indian Residential School Crisis Line 1-866-925-4419**

Provides 24-hour crisis support to Indigenous peoples directly or indirectly impacted by residential schools

**Talk 4 Healing 1-855-554-4325 (HEAL)**

24/7 support for Indigenous women & girls, by Indigenous women in ON

**Suicide Crisis Helpline 9-8-8**

24-hour national crisis support and central intake coordinated by the Centre for Addiction and Mental Health (CAMH). This number is a central intake for many other crisis lines and organizations. When you call, you'll be directed accordingly, but you can still directly call other lines.

**Talk Suicide 1-833-456-4566, 24/7 (funded by CAMH) (Canada-wide)**

**Trans Lifeline 1-877-330-6366**

24/7 support service for Two Spirit & Trans folks needing support

# Prisoner Support, Connection & Advocacy

## **Disability Justice Network of Ontario (DJNO) Prison Project**

423 King St E Hamilton ON L8N 1C5

Aims to hear, document, provide support to, and amplify the experiences of racialized and/or disabled people who are or who have been imprisoned. We push against policing & prison systems through education & community organizing. All team members are prison abolitionists who believe in care & a community-centred approach to accountability and justice.

We run prisoner support lines throughout “Ontario” for you to call to talk/vent, have information looked up, and resources sent to you in jail. Call your closest phone line or write to us.

Milton/GTA

416-775-7983

Eastern Ontario

613-768- 9951

Hamilton

905-631-4084

Southwestern Ontario

519-690-0836

Niagara

905-227-5066

Northern Ontario

807-548-4312

**Barton Prisoner Solidarity** is an abolition group that aims to reduce the isolation that prison walls create. They work specifically with people incarcerated at Barton Jail in Hamilton.



**PASAN** 416-920-9567 or 1-866-224-9978 is a community-based prisoner health and harm reduction organization that provides support, education and advocacy to prisoners and ex-prisoners across Canada. They also produce a magazine called CELL COUNT, made by, for, and about prisoners and ex-prisoners. Make submissions (drawings, writings, etc.) or get the magazine sent to you in prison by mailing, calling, or asking someone to sign you up online.

PASAN - Cell Count 526 Richmond Street East Toronto, ON M5A 1R3

**Rittenhouse: A New Vision** is a community-based conflict mediation, education, advocacy and support for prisoners, ex-prisoners, their families and our communities.

Rittenhouse: A New Vision | Holy Trinity Radical Community Organizing Hub 6  
Trinity Square Toronto, ON, M5G 1B1

**Incarcerated Voters of Ontario (IVO)** is a prisoner advocacy group working for prisoner rights and justice. Incarcerated Voters of Ontario P.O. Box 39518  
Mississauga, ON L5G 4S6

**Justice Trans** 1-819-210-9958 is a not-for-profit aimed at increasing access to justice for the transgender community across Canada.

**Inside/Out** [incarcerationbooks@gmail.com](mailto:incarcerationbooks@gmail.com) Books and community care for those affected by incarceration in Ottawa and beyond. Ask someone outside to email them.

**Books To Prisoners Ottawa** (613) 520-2757 shares donated reading materials to prisoners and promotes national social justice campaigns that work with local community partners with provincial institutions at OCDC, William E Hay, Collins Bay, Bath, Port-Cartier, CSC institutions from BC to the Maritime's. Write to them to ask for a book.

OPIRG – Carleton Books to Prisoners 326 UniCenter Carleton University  
Ottawa, ON. K1S 5B6

**Book Clubs For Inmates (BCFI)** is a registered charity that organizes volunteer-led book clubs within federal penitentiaries across Canada.

Book Clubs for Inmates c/o Centre for Social Innovation  
720 Bathurst Street Toronto, ON M5S 2R4

**Out Of Bounds Magazine** 6000 William Head Rd Victoria, BC V9C 0B5      A  
quarterly magazine written for and by prisoners across Canada. Published by Penal Press. Write to submit or receive a copy.

**Walls To Bridges (W2B)** [info@wallstobridges.ca](mailto:info@wallstobridges.ca) is an educational program offering university/college courses taught in correctional settings across “Canada.” Classes are equal numbers of incarcerated (“inside”) and university/college-based (“outside”) students learning together as peers. When you’re done you get a university/college credit. Ask someone on the outside to reach out to their email.

**Millhaven Lifers' Liaison Group (MLLG)** [mllgottawa@gmail.com](mailto:mllgottawa@gmail.com) is made up of volunteers from the community & uOttawa to establish connections and a support group with MLG in Bath, Ontario. Ask someone on the outside to reach out to their email.

**Criminalization And Punishment Education Project** [cpep.action@gmail.com](mailto:cpep.action@gmail.com) works to educate, advocate, and connect various community members with people who have been impacted by criminalization

## In-Court Resources

The following are community service organizations that have offices or staff in the courthouse. They often work with or collaborate with police, courts, crown attorneys, and CAS.

### **John Howard & Elizabeth Fry Societies**

**JHS: 416.408.4282. E-Fry (EFS): (613) 900-4605**

JHS & EFS are non-profit organizations that work with people who are criminalized and/or in conflict with the law in/out of detention facilities.

EFS specifically serves women, trans, and non-binary people. Where Efs doesn't exist, John Howard serves all genders.

JHS helps with bail planning & has supervised bail programs when you don't have a surety. They also have a lot of programming e.g. anger management to complete diversion or probation requirements. Call the main line to get your local number.

### **Canadian Mental Health Association**

**1-800-875-6213**

CMHA provides alternatives and options to people with serious mental illness who become involved in the criminal justice system.

Their Mental Health Court Support Services has three components:

1. Mental Health Court Diversion
2. Intensive Case Management
3. Release from Custody

### **1. Mental Health Court Diversion**

- Links people to short and long-term services and supports
- Supports and information for family members/loved ones
- Education about consumer issues, mental illness, mental health services, and the mental health system.
- Consultation for people who are deemed unsuitable for diversion.

Staff also consult/advise the judiciary on cases referred to diversion.

### **2. Intensive Case Management**

- For people with a severe mental illness, concurrent disorder, or dual diagnosis
- Provide outreach, court support, and support plans to prevent further involvement with the criminal justice system
- Links to longer term case management, rehabilitative programs/medical treatment, accessing appropriate financial entitlements. accessing appropriate housing
- Support and information for family members and/or loved ones

### **3. Release from Custody**

- Short term intensive case management
- For people with serious mental illness who are being released from custody to facilitate a stable community transition, reduce recidivism, & enable a recovery-focused lifestyle.

## **Indigenous Court Workers**

ICW's often work out of Indigenous Friendship Centres. Most courthouses have an Indigenous court worker who can help you with:

- Legal information
- Applying for a Legal Aid certificate
- Referring you to community services for help with issues like mental health, trauma, substance use, and/or homelessness
- Your release plan for your bail hearing
- Your plan of care for your sentencing hearing
- Indigenous diversion, if appropriate

Talk to your facility's Native Liaison Officer (NILO) to get more information on what supports might be available to you, or your local friendship centre.

# In-Community Resourcing

This section includes information on bail release programs, peer groups, mental health supports, and prisoner programs and advocacy. Some are especially useful if you are trying to set up a bail/release plan! Some resources here are available to those in “Ontario,” while others are only available to people in or near Hamilton, ON.

## **FOR YOUNG ADULTS**

### **ALTERNATIVES FOR YOUTH (AYP)**

offers programming & education for youth aged 12-25 in Hamilton area who use substances or have mental health concerns. They also offer treatment for youth who have been impacted by loved ones using substances

### **JUSTICE FOR CHILDREN & YOUTH (JFCY) 1-866-999-5329**

provides referrals, legal education, case service, & test case litigation to anyone under 18 or under 25 if you're homeless & in need of legal advice.

### **SPEQTRUM** [info@speqtrum.ca](mailto:info@speqtrum.ca)

is a YWCA Hamilton program that's youth-founded and youth-focused for 2SLGBTQIA+ people aged 17-29 in Hamilton, ON. Focuses on skill-sharing & community building. They provide online one-on-one support through weekly Check-Ins and Peer Support, where speqtrum team members support youth through different challenges in life.

### **THE HUB – YOUTH PROGRAM**

provides justice services support, justice circles/alternative justice practices,

accompaniment, crisis intervention, mediation and drop-in programming to anyone aged 17-25

**YOUTH WELLNESS CENTRE (YWC) 905-522-1155 ext. 31725**

Anyone 17-25 is connected with a mental health professional who will work with you to help you understand the mental health challenges you're facing. Together you'll create a plan that might include services at the Youth Wellness Centre (e.g. participating in a group to learn coping skills or meeting with Youth Mentors), or help to access community programs/services. Access to substance use counselling is also available through a partnership with Alternatives for Youth, near YWC. 38 James St. South, Second Floor [YWCIntake@stjoes.ca](mailto:YWCIntake@stjoes.ca)

**FOR ADULTS**

**CANADIAN MENTAL HEALTH ASSOCIATION (CMHA) 416-646-5557**

provides all ages recovery-focused programs & services including court & housing support, street team outreach, social programs, peer support etc. Call to ask for your regional office's number.

**COMPASS COMMUNITY HEALTH CENTRE**

905-523-6611 ext 2000

offers primary care, as well as mental health support groups.

**HAMILTON URBAN CORE 905-522-3233**

provides primary healthcare, community health & harm reduction services, mental health & addictions counselling, meal programs and more



## **JOHN HOWARD SOCIETY (JHS)/ELIZABETH FRY SOCIETY (EFS)**

JHS: 416.408.4282. E-Fry (EFS): (613) 900-4605

are non-profit organizations that work with people who are criminalized and/or in conflict with the law in/out of detention facilities.

EFS specifically serves women, trans, and non-binary people.

Where EFS doesn't exist, John Howard serves all genders.

JHS helps with bail planning & has supervised bail programs when you don't have a surety. There's also a lot of programming (e.g. for anger management, Fetal Alcohol Effects) to finish diversion or probation requirements as well as transportation programs to help families visit prisons in the Warkworth & Kingston areas. Call to get your local number.

## **THE BRIDGE (Hamilton) 905-522-0283**

provides reintegration services to men exiting incarceration & their families. There's housing programs, intensive case management, support groups

## **HAMILTON BRAIN INJURY ASSOCIATION (HBIA)**

289-442-4023

HBIA matches people with brain injuries to peer mentors & social support

## **QUEER JUSTICE PROJECT 905-527-4572**

works to address the disproportionate legal burdens & challenges the Two Spirit & Queer community faces. e.g. identity document changes (including modifying Indian Status Cards), intimate partner violence, human rights abuses & discrimination,

housing-related issues, employment, family, immigration & refugee claims, criminal charges & end of life planning.

**TOGETHER WE RISE 905-527-4572**

offers a range of clinic law services by and for Black people. People in the service recognize the explicit & implicit racism that's in our society that contributes to legal complications for Black individuals

## For Indigenous People

Indigenous people can access court worker programs, systems navigation help, counselling, ceremony, peer & support groups through local friendship centres, Indigenous health centres & service hubs.

**DE DWA DA DEHS NYE S ABORIGINAL HEALTH CENTRE**

905-544-4320 (Hamilton) | 519-752-4340 (Brantford) | 289-438-1540 (Niagara)

offers a variety of Mental Health & Addictions Services.

**NATIVE WOMEN'S CENTRE (NWC) 1-888-308-6559 (Hamilton)**

provides services for Indigenous women in Hamilton e.g. conflict resolution, peer support, systems navigation, support for those being criminalized etc. NWC also has a crisis line for Indigenous women that's available 24/7.

**HAMILTON REGIONAL INDIAN CENTRE (HRIC) 905-548-9593**

offers many different programs & services. If you're looking for Indigenous court workers, support groups, and culturally-specific resources in Hamilton, this is the

place to go. If you're outside of Hamilton, call the Ontario Federation of Indigenous Friendship Centres to find your local friendship centre. (416) 956-7575

**YÉN:TENE** 905-527-4572 | 289-680-4544

(you and I will go there together) is meant to improve access to justice & provide culturally respectful and appropriate legal services for Indigenous people in Hamilton and surrounding communities.

## Supports for Families

**If your family is struggling with you being in jail or prison, the following supports exist for them!**

### **CANADIAN FAMILIES AND CORRECTIONS NETWORK**

For family & kin affected by the incarceration of a loved one. CFCN advocates & pushes for policy change, publishes information booklets & storybooks for kids, conducts research, & offers unique programs & groups.

### **KIDS WITH INCARCERATED PARENTS (KIP)** 416-505-5333

KIP Canada provides programming & supportive services that foster self-esteem, security, & developing resilience for children & youth affected by parental involvement in the justice system. It includes afterschool programs, text support lines, back-to-school and holiday drives and more.

### **MOTHERS OFFERING MUTUAL SUPPORT OTTAWA**

MOMS Ottawa is an Ottawa-based monthly peer support group for women (but also

open to anyone in Canada) with a loved one in prison. They share practical information & advice about the justice & corrections process.

**THE BRIDGE (Hamilton) 905-522-0283**

provides reintegration services to men exiting incarceration & their families. There's housing programs, intensive case management, support groups

## We Keep Us Safe

You might be very scared about the idea of being sent to prison. Where does this idea come from? Who are you afraid of? Who do you have the most affinity with?

It's true that prisons aren't nice places to be. In some cases, they can also be very dangerous. Prisons cause very real harm and trauma – they even reduce life expectancy. But in many cases the thing that makes our prison systems so unsafe are the actions and neglect of correctional workers and administration. This could mean outright violence from corrections officers (CO)-- but it also means things like choosing not to provide appropriate health and mental health supports, or intentionally maintaining environments where prisoners feel competitive instead of cooperative.

The only way to resist the intentional isolation and violence of the criminal legal system is to build & rely on relationships with other prisoners and legal supports on the outside.

Administration and staff aren't interested in the physical or emotional safety of most prisoners. If you're facing the possibility of jail or prison, we encourage you to consider building solidarity and power amongst prisoners. These can help keep us safe as we navigate the process. See below for ways prisoners and their supporters have collaborated to build power and create better situations for themselves.

## During An Arrest

It's easy to feel like we have no power during an arrest. In most cases that's true; our compliance is maintained with force and we have little to no control over the process. But— there are a couple instances in which we can build or hold power.

One way is by simply not talking to the cops.

Seems basic, right? But it can feel complicated – especially if our family is pressuring us to own up or cooperate with police, or police are telling us they already know everything because a friend snitched you out.

No matter what anyone tells you, staying quiet puts you in the best position to beat the charges & keep others you care about safe. That's a huge amount of power!

A second way is by building and showing solidarity with others during an arrest or while detained at the police station.

We're not going to lie; this won't always work. Sometimes it even gets you in trouble. But it has also been used in situations to build power amongst those arrested.

The following are real-life examples of prisoners sharing stories about how they worked with and for each other to get what was needed.

### **Solidarity During Arrest**

#### **Story #1: Access To Meds**

During a protest several people were unexpectedly arrested. Most of us didn't know each other. There was one older person who needed access to their medication and kept telling police this. The police had been told repeatedly and rejected the person's request each time: "Nothing until you're processed."

Eight of us were sitting in a paddy wagon waiting to be processed by the staff sergeant. When police finally came for one of us, that person refused: “Not until you process the person who needs their medications.”

Instead, police called for someone else to get out of the paddy wagon. Without any pre-planning, that person also refused to get out of the wagon until the person requiring medical attention was processed.

Police finally gave in & took the person needing medications to be processed first.

### **Story #2: Just Talking**

I was sitting in a police station after being arrested. I was in my own cell. Someone next to me was panicking and crying a lot, while also kicking the cell doors and bed. The police ignored her for a while but then started threatening her, saying if she didn't shut up that they would take her stuff and put her in a paper gown.

When police left the area and the woman calmed down a bit, I started talking with her. It wasn't much, but she did stop panicking. She thanked me on our way to court.

### **Story #3: Accessing Medical**

Sitting in the police station while waiting for a bail hearing I heard someone across the hall asking to speak with their lawyer. The police kept telling them the person had

already spoken with duty counsel and that they weren't allowed any more calls. It became clear this person had also been injured during their arrest.

When I spoke to my lawyer, I told them about the situation. My lawyer seemed hesitant to call at first because he didn't want to step on anyone's toes, but eventually he agreed to try and follow up.

About five minutes later the police came to the guy's cell to let them speak with (my) lawyer. Unfortunately, the cops also knew I had tipped the lawyer off and delayed my transfer to bail court. It was still worth it. They ended up transferring that guy to the hospital.

### **Prisoner Solidarity**

When you spend a significant amount of time in detention or prison, building connections with others is bound to happen. Strengthening these connections can help you all fight for safety and collective gains.

### **Story #1: Ramadan**

When staff at the Ottawa-Carlton Detention Centre (OCDC) wouldn't allow a prisoner to change their medication and food schedule to accommodate Ramadan they sought the support of a local prisoner support group. That group – the Criminalization and Punishment Education Project (CPEP) - reached out to friendly lawyers, who issued a notice under the Ontario Human Rights Code. Eventually the



individual's medication and food schedule were changed to accommodate their participation in Ramadan.

### **Story #2: Immigration Detention**

Martin Sisay was one of 191 immigrant detainees being held at Central East who went on a historic hunger strike in 2013 to resist indefinite detention. Martin went without food for 40 days. The hunger strike was organized by and for prisoners, and organically supported by various organizations on the outside.

This was the largest hunger strike in Canadian history and brought the issue of immigration detention into the public's eye, culminating in several successful court challenges around indefinite detention – and even resulting in Martin making a successful application for humanitarian & compassionate grounds to remain in Canada himself.

### **Story #3: Hunger Striking**

*Contextual note: Prisoners have few expressions of power while in prison - one of the ways in which you can leverage power against administration is by hunger striking. In prison, staff must track who takes their meals and food. Refusing meals - or hunger striking - has administrative consequences for the prison. Collective hunger strikes are often used by prisoners to make gains around prison conditions.*

In early April of 2023, the entire fourth floor of Barton Jail began a hunger strike with demands to:

1. Improve yard time access
2. Faster mail processing & delivery (this was taking months)
3. Keep tv channels gained during a previous collective action in 2021, and;
4. End frequent lockdowns

They were supported through a local prisoner support group, which organized information pickets and call-in campaigns to the jail, and other floors of the jail joined the strike over the course of 4 weeks.

The hunger strike was ended after jail administration promised:

- More frequent mail
- Formal permission to send mail within the institution
- Yard at least 3 times a week
- Ability to smudge at least 3 times a week
- Change of bedding regularly
- Lockup is at 8 instead of 7:30
- During lockdown days when they are short staffed, ranges will be out of their cells for half a day, rather than locked up all day. It will rotate between floors
- Access to razors & haircutting equipment for haircuts to look presentable at court

After 3 months some demands had been met, some had been partially met, and others not yet met.

# Frequently Asked Questions

## **Will I Have A Criminal Record?**

Not necessarily. Just because you're charged with a crime doesn't mean you'll have a criminal record – even if you spend time in pre-trial detention.

## **Am I Going To Prison?**

Not necessarily. Just because you're in pre-trial detention doesn't mean you'll be sentenced to prison. There's ways to resolve charges without spending more time in custody.

If you're in detention, you might still get bail. If you've been remanded, you might be sentenced to "time-served" or other sentences that don't require more jail than you've already had.

Part of sentencing includes "deterrence". If you have repeat offenses the court will see you as someone who needs higher deterrence & give you more serious consequences.

Sentencing typically happens in a "ladder" format with most first/non-serious offenses being the first rung of a ladder with consequences that typically include diversion or discharges which don't include jail, or even a permanent criminal record.

As offenses become more serious, or as an individual is criminalized repeatedly, the consequences "move up" the ladder to include permanent criminal records, supervision, house arrest, and jail.

Since racism and ableism are deeply ingrained in the criminal legal system and are worse in some places more than others, many times people who are disabled, neurodivergent, use substances, and/or are Black, Indigenous or otherwise racialized, end up in prison when someone else who is white or non-disabled wouldn't have.

If you're disabled AND racialized, one of the most important things you (or a support person) can do for your case is give yourself THE BEST chance at getting out on bail at a bail hearing.

This is because someone who spends time in pre-trial custody often pleads out before they can take their case to trial to escape prison conditions. A judge or jury will also find it easier to assume guilt in someone appearing in court from detention.

Depending on the circumstances, this may mean hiring a private lawyer. It can also mean spending a bit of time in custody on remand BEFORE your bail hearing, so that you and your lawyer can prepare the best possible bail plan to get you out of jail.

It's important to note that not all racialized or disabled individuals are at equal risk of being kept in detention or serving a jail sentence. There are factors that reduce risk, such as individuals with large support systems, good jobs, who own property, or

have an education. There are also factors that increase risk, such as being known to use substances, being houseless, repeatedly criminalized/having a record, being a sex worker, or having a serious mental health diagnosis on record.

### **Can Police Lie?**

Absolutely, and they do. Police don't have to tell you they are police if they are undercover, even if you ask them directly. Police have also been known to lie to people they arrest to try and get a confession. Sometimes this sounds like police telling you that they already arrested your friend who told them everything, or that they "can't help you unless you talk" or that they'll let you go home if you just clear up what happened. **Never talk to the police.**

### **Can Police Look At My Phone?**

Legally it depends on the situation and whether your phone is locked or not. If you're charged with a crime and your phone could give police more evidence, they're generally allowed to TRY and look at it.

If your phone's locked, you don't have to give the password, but if it's locked with facial recognition or your fingerprint, they might just hold it in front of your face or use your fingerprint to unlock it.

If your phone is locked or encrypted, police need to get a special warrant to seize and search your phone.

Whether their search is successful depends on the security of your device and the programs that the police department has to search and take information from it.

# Glossary of Terms/Definitions

**Ableism:** The act of treating someone a certain way just because they are disabled or autistic. For example, CO's putting those with mental illness in segregation "for their safety".

**Absolute Discharge:** A finding of guilt – not a conviction. No requirements to fulfil, no supervision. Your criminal record can be destroyed after 1 year.

**Accessibility:** An adaptation to make something free of barriers for someone with a disability need. It can be physical – like building a ramp for someone in a wheelchair – or cognitive, like using a dyslexia font to help someone read better!

**Adjourn:** To bring back a matter another day or time

**Cognitive:** A brain process. A cognitive disability might include having conditions like a concussion, dyslexia, or ADHD!

**Conditional Discharge:** A finding of guilt – not a conviction. There will be a set period of probation terms to follow and you may have to report to a probation office. If you follow the terms and aren't charged with other offences in that time, your criminal record can be destroyed after 3 years.

**Conditional Sentence:** a non-custodial sentence (also known as house arrest) for people serving less than 2 years.

**The Crown:** Crown prosecutors (prosecutors), Crown counsel, or “the Crown” - are lawyers employed by the Attorney General. They’re the lawyer who represents the interests of the public and the “victim” of a crime. If you’re facing a charge, be very careful what you say in front of them.

**Crown Pre-Trial (CPT):** A meeting to discuss possible resolution, or issues for trial, witnesses, and trial date. Also sometimes called Crown resolution meeting in the early stages.

**Crown Screening:** A paper indicating the Crown’s initial (starting) position on your charges and what they might be seeking. Final outcomes can vary significantly from the screening form.

**Custody/Custodial:** When you’re not free to do as you wish. Closed custody is time in a detention facility, provincial jail, or federal prison. Open custody are supervised programs in the community (e.g. halfway house) where you must comply with conditions.

**Detained:** To be kept by police; not under arrest/charged but not free to go

**Disability:** When your body or brain works differently than someone else’s, either permanently or temporarily. You can have a “mental disability” such as depression or PTSD, a “cognitive disability” such as ADHD or a brain injury, or a physical disability such as a missing arm.

**Disclosure:** A collection (digital or physical) of evidence the Crown has and intends to use against you; officer notes, photos, video, statements to police, etc. Same as "discovery" in the U.S.

**Diversion:** A process to settle your charge outside of the criminal court process. Often offered to first-time accused facing minor charges. There's no criminal record.

**Duty Counsel:** no-cost lawyers for low-income people who don't have private counsel. They can represent clients at simple court appearances (not trials), give legal advice, and help review court documents

**Gladue:** Can refer to either a set of sentencing principles for Indigenous people or a special court for Indigenous peoples to have charges heard in

**Judicial Pre-Trial (JPT):** A meeting in front of a judge between the Crown and you (if self-representing) or your lawyer to discuss issues for a jury trial

**Neurodivergence:** A word used to describe having a different brain process than "most" people. Conditions that can make you neurodivergent include autism, ADHD, or borderline personality disorder.

**Neurotypical:** A word used to describe people who do not have a condition that impacts how their brain processes the world.



**OIC Undertaking:** Signing conditions with an officer in charge (OIC) to be released from the police station (instead of being kept for a bail hearing the next day)

**Parole:** A release from prison under certain conditions before your sentence is completed. **Day Parole:** when you live in a community-based supervision program (e.g. halfway house). **Full Parole:** often lets you live in your own housing, but there's still supervision

**Peace Bond:** The withdrawal of the charge(s) in exchange for signing an agreement to follow certain conditions. No criminal record. Usually used in the case of withdraws and diversion

**Probation:** A term of post-sentencing conditions, lasting between 1-3 years. It may be supervised or not

**Promise to Appear (PTA):** A signed document agreeing to appear for fingerprinting and/or court. Often used with OIC Undertakings

**Racism:** A structural force – not one person's thinking (which is just prejudice) but one person's thinking with the power of an entire system behind it. For example, the legal system is racist because it is based in white supremacy and eurocentrism. Its nature dictates that eurocentric ideas of justice are the only "right" ones and forces other cultures through it.

**Recognizance:** A release from detention (bail hearing) with a promise to follow certain conditions without a surety

**Remand:** To be sent to custody to await a bail hearing or trial

**Set Date:** The court dates that occur after your first appearance, while awaiting screening & disclosure, getting Legal Aid, or before resolution meetings. Usually set every 3-4 weeks as the case progresses.

**Summons:** An official notice to an accused or witness that they must attend court. Often served by a process server or police officer.

**Surety:** A person who agrees to supervise an accused in the community and ensure the person attends court and follows their bail conditions. Sureties are used in Ontario instead of cash bail programs: a surety must promise an amount of money to the court but rarely needs to pay up front

**Suspended Sentence:** A sentence that can be "recalled" or brought back before the court if you breach the conditions associated with it, so that you can be re-sentenced to custody. This type of sentence is not "final" until you have served it in its entirety