

# Mental Illness and the Criminal Justice System in Victoria



your  
rights

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your  
rights

people who know about the law are  
better able to stand up for their rights

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# Introduction

**People who know the law are better able to stand up for their rights and have greater control over their own lives.**

Research shows that one out of every five people will experience mental illness at some time in their lives – it may be mild or severe, short term or long term. You are more likely than most people to come into contact with the police and the courts if you have a mental illness. This may or may not mean that you have committed a crime. It is estimated that at least 70% of people in prison have experienced mental illness. If you are aware of your rights you will be in a better position to protect yourself as you progress through the criminal justice system.

This book is about laws in Victoria that apply to you if you are involved in the criminal justice system and have a mental illness. Many laws apply to all people who are involved in the criminal justice system but there are some laws that have been made specifically to protect people who have a mental illness.

The information in this book is intended to outline your rights as a person who experiences mental illness and becomes involved in the criminal justice system. This book gives you information about:

- ▶ Mental illness
- ▶ The Court/s
- ▶ Police powers
- ▶ Bail
- ▶ Diversion and the defence of mental impairment
- ▶ Sentencing options

It also gives you practical tips on how to deal with:

- ▶ Police
- ▶ Prison
- ▶ Court staff
- ▶ Getting help when experiencing mental illness in prison
- ▶ Lawyers and Legal Aid
- ▶ The Parole Board
- ▶ Community Corrections

This book will not answer all of your questions. It does not cover compensation for victims of crime or the separate PERIN Court system that deals with infringement notices for very minor offences such as parking offences and public transport offences. For information on the PERIN Court system see the booklet 'On the Spot: A Guide to Fines and the Perin System'.

Always check how the law applies to your individual situation. If you have a mental illness or if your doctor believes you have one, you should always tell your lawyer when you are seeking legal advice in relation to a criminal law matter.

Other useful resources:

[On the Spot: A Guide to Fines and the Perin System](#)

[Your Day in Court: A guide to criminal offences in the Magistrates' Court,](#)

[Your Rights: Police powers in Victoria](#)

Available from Victoria Legal Aid [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

[Getting Past your Past: Moving on from a police record in Victoria.](#)

Available from North Melbourne Legal Service

[www.communitylaw.org.au/northmelbourne](http://www.communitylaw.org.au/northmelbourne)

Ph: 9328 1885

[Patients' Rights: A self help guide to the Mental Health Act](#)

Available from Mental Health Legal Centre

[www.communitylaw.org.au/mentalhealth](http://www.communitylaw.org.au/mentalhealth)

# 1 Mental Illness

Mental illness is a term that refers to different types of mental health problems. You may experience mild or severe mental illness. You may experience mental illness only once or many times in a lifetime.

In this book the term 'mental illness' is used to cover all the different mental health problems people may have. Most of the rights in this book apply to all types of mental illness. This book points out where some rights may not apply to all mental illnesses. Whichever sort of mental illness you have, you should tell the people in the legal system you are dealing with, because it might help your case. You should tell these people even if someone else thinks you have mental illness but you disagree.

Some examples of mental illness are: schizophrenia, bipolar (this is also called manic depression), schizoaffective disorder, depression, drug induced psychosis, anxiety, personality disorder, dementia, obsessive compulsive disorder, phobia and eating disorders. What the illness is called is not important. If you have a significant disturbance of thought, feeling, perception or memory you may have a mental illness. If you experience extreme depression, sadness, tension, disturbed behaviour, fear or 'highs' that are out of proportion with your life circumstances you may have a mental illness.

Different mental illnesses are described by psychiatrists in books such as the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) and the International Classification of Diseases (ICD 10). These books are available at hospitals and mental health clinics. If you do not know what kind of mental illness you have, ask your doctor, psychiatrist, case manager or nursing staff.

Common medications your doctor may have prescribed if you have a mental illness are outlined here. Often the same medication may have different names. Even if you do not know the name of your mental illness tell your lawyer, the police and others involved in the criminal justice system that you are on medication.

## Medicines used in psychiatry

Risperdal	Alepam	Zactin
Stelazine	Antenex	Zoloft
Serenance	Ativan	Prothiaden
Seroquel	Buspar	Prozac
Zyprexa	Ducene	Clopine
Anafranil	Kalma	Anafranil
Paroxetine	Normison	Clomipramine
Arima	Olanzapine	Sinequan
Aropax	Abilify	Surmontil
Aurorix	Temaze	Lumin
Auscap	Temtabs	Luvox
Fluanxol	Murelax	Placil
Fluphenazine	Serepax	Cipramil
Haldol	Valium	Avanza
Haloperidol	Xanax	Allegron
Largactil	Rivotril	Fluoxetine
Sertraline	Lithium/Lithicarb	Deptran
Modecate	Sodium Valproate	Dothep
Lexapro	Epilim/Valpro	Efexor
Neulactil	Paxam	Endep
Orap	Rivotril	Aripiprazole
Aldazine	Tolvon	Fluohexal
Anatensol	Tofranil	Lovan
Chlorpromazine	Tryptanol	Risperidone
Clopixol	Solian	Quetiapine
Clozaril	Carbamazepine (Tegretol/Teril)	

## 2 Police Powers

### Telling the police about your illness

It is difficult for most people with a mental illness to talk about it. Many people do not like the word mental illness because people do not think they are 'normal' if they say they have a mental illness. You may not want to talk about it because you do not agree with the doctors who have diagnosed you. Even if you do not agree with your diagnosis you should think carefully about telling the police about it.

Unlike other illnesses, mental illness may not be obvious to the police. If you tell the police that you have a mental illness, it is the law that they have to do certain things to protect you.

When you first get involved with the police it is important that you either tell the police or tell a friend, relative, guardian, doctor or case worker to advise the police that you have a mental illness. It may help your case as mental illness may give you a defence or reduce your sentence. The laws are complex and you will need legal assistance. (See Chapter 4).

### Other things to tell the police

Always tell the police that you do not want to talk to them about the alleged offences before you speak to a lawyer. You only have to give your name and address to the police in some circumstances. You should see the booklet [Your Rights: Police Powers in Victoria](#) by Flemington and Kensington Community Legal Centre and Victoria Legal Aid, to find out what they are. If the police are entitled to ask for your name and address and you refuse to give it to them you will be committing an offence.

### Questions from you the police must answer

If you are asked by the police to give your name and address you also have the right to ask that the police officer provide you with their:

- ▶ Name
- ▶ Police station where they work.
- ▶ Rank

The police will be committing a crime if they do not provide you with this information.

## Arrest

### What arrest is

The police can only arrest you if they suspect that you have committed a crime.

Ask the police if you are under arrest and what you have been arrested for.

You cannot be taken to a police station against your will unless you have been arrested and have been told what you have been arrested for. Sometimes the police might ask you to go to the police station without arresting you. If you are not under arrest you do not have to go with the police.

If you do not go willingly they may arrest you. The police are required to tell you what you are under arrest for. When arresting you the police can only use reasonable force. If you try to stop them arresting you, they may use greater force to arrest you. This may include handcuffs. You may be charged with resisting arrest if you try to stop them. Always tell your lawyer or the court about the circumstances of being charged with resisting arrest.

### After you are arrested

If you are arrested (or you are not arrested but you agree) the police may:

- ▶ Take you to a police station.
- ▶ Request a police doctor (Forensic Medical Officer) to see if you are well enough to be questioned by the police. Do not talk to them about the alleged offence – they are only there to find out about your mental health.

- ▶ If the police believe that you have a mental illness and you are well enough to be interviewed the police must call an Independent Third Person (ITP) to talk to you and be present at an interview. (See page 16 for information in relation to ITP).
- ▶ Keep you at the police station while they make further investigations. (See page 19 for how long they can keep you).
- ▶ Take your fingerprints. The police can use “reasonable force” to obtain your fingerprints if you refuse to give them. The force used by the police must not be any more than the force you are using to resist.
- ▶ Take body samples. You should refuse to give body samples to the police unless you have had legal advice.
- ▶ Ask if you will participate in an identification parade or line up. Do not agree unless you have had legal advice.
- ▶ Ask if they can take photos. Do not agree unless you have had legal advice.
- ▶ Search you. An internal body search can only be done by a doctor who is the same sex as you and with your agreement or an order from the court. If they take your clothes off to search you this must be done in a private place. You should tell the police if you think a search will make you unwell.
- ▶ Search your property or your car if they have a warrant and sometimes if they do not. They can search you and your property while you are in hospital if they believe you are carrying illegal drugs, stolen goods or firearms.
- ▶ Formally interview you on a tape recorder. (See page 19 about tape recording).
- ▶ Formally charge you. (See page 20 about being charged).
- ▶ Release you on bail, or take you to a bail justice or court to apply for bail. (See page 24 about bail).
- ▶ Remand you in custody.

## How police can use what you tell them

- ▶ The police have to prove that you have committed a crime – you do not have to prove that you are innocent.
- ▶ One of the reasons why the police want to interview you is so that you can confess to committing a crime.
- ▶ Anytime the police speak to you they can use what you say against you. There is no such thing as ‘off the record’. This means any conversation you have either before you are arrested, when you are being questioned on tape, after you have been charged, in the police cells – anything – the police can say that they spoke with you and tell the court what you said.
- ▶ The police do not have to interview you if they have enough evidence to charge you with a crime. However, the police will usually interview you even if they know you will say “no comment”.

## Police interviews

- ▶ It may not be a pleasant experience being interviewed by the police. If you have a mental illness some things will affect you more than other people who do not have a mental illness. When you are arrested or interviewed make sure:
  - ▶ If you are thirsty – ask for a drink of water.
  - ▶ If you are hungry – ask for something to eat.
  - ▶ If you are too hot or cold – tell the police if you want a blanket or to be interviewed in a place that is not too hot.
  - ▶ If you need medication – tell the police.
  - ▶ Tell the police if you think your mental illness or medication is making it too hard to concentrate or making the interview too distressing or tiring. You can ask for a break or tell the police you want to stop and see a police doctor.

# Independent Third Persons (ITPs)

## When ITPs should be present

The police must arrange for an ITP to attend an interview if they believe that you have a mental illness. This is part of the police standing orders. An ITP must be present if you are either being interviewed as a suspect, witness or victim of a crime.

## Who ITPs can be

An ITP can be either:

- ▶ A relative or a friend who is not associated with the police inquiry, or someone else you trust.
- ▶ A person who is trained by the Office of the Public Advocate. This person is a volunteer. (See page 75 for details of the Office of the Public Advocate).

## Things you should know about ITPs

An Independent Third Person is not a lawyer and does not do the job of a lawyer. The role of an ITP is to make sure you understand your rights and that you understand the interview process. They are there to make sure that you understand questions that the police ask you, and that the police understand what you are saying. Remember they are not there to give you legal advice— they are only there to watch the communication between yourself and the police and make sure the process is fair.

Do not assume that an ITP is on your side. Do not talk about any criminal offences with the ITP. Anything you say to an ITP can be used against you in court. An ITP should speak with you in private before the interview begins to ensure that you understand your rights in the police interview.

You should tell the ITP that you want to speak with a lawyer before you are interviewed. Ask the ITP to find a lawyer for you to speak to before you are interviewed by the police.

You do not have to have an ITP present at the interview. Tell the ITP if you do not want to speak to them or you do not want them to be present at the interview.

If you were questioned by police and they did not provide you with an ITP tell your lawyer or the court.

## **Interpreters**

If you do not understand what the police are saying because of language difficulty or you are not confident speaking English, the police must provide you with an interpreter. The police must provide you with a qualified independent interpreter before any questioning begins. Do not answer any questions asked by the police before the interpreter is present. You do not have to pay for the interpreter.

Tell your lawyer if the police did not provide you with an interpreter.

## **Hearing impairment**

If you have a hearing impairment the police are required to provide you with an independent qualified interpreter before any questioning begins.

## **Your rights when questioned by the police and in police custody**

You have the right to remain silent. This means if you are being questioned by the police you are not required by law to answer any questions the police ask you except your name and address.

If the police ask you questions about a crime and you are not responsible for that crime you can give the police an explanation that you are not responsible for what they are accusing you of. However, it is always safer to ask a lawyer first whether you should answer any questions.

If you have a mental illness it is best not to speak to the police before you have spoken to a lawyer. If you are unwell you may say things to the police that you may not remember or things that sound as if you are giving a different story to the police.

You should always tell your lawyer that you have a mental illness or if a doctor thinks you have one. If you do not tell the lawyer this they may not be able to give you the best advice to help your case.

Do not tell the police you are guilty even if you think you might be. You may have a defence that you do not know about. Even if you think you have an explanation and are not guilty it is best to say nothing to the police until you obtain legal advice. One reason to seek legal advice is because there are some circumstances where it is better for your case to speak to the police. A lawyer should give you this advice – not the police or an Independent Third Person. If you cannot speak with a lawyer say “no comment” to all questions.

If you do not want to answer questions asked by the police you should say “no comment” to all questions except your name and address. Answering some questions and not others will not help your case.

If a lawyer tells you to say “no comment”, answer all questions asked by the police except your name and address by saying:

“no comment on legal advice”.

If you answer “no comment” to police you can still explain your side of the story at a later time.

## **Speaking to your family, friends, lawyer, doctor, case worker or ITPs**

Before any formal questioning takes place, the police must allow you to telephone a lawyer to get legal advice. The phone must be in a private place. They must also allow you to call a family member or friend.

Police don't have to allow this if they believe that during this time someone else involved in the crime might get away, some evidence may be lost or tampered with, other people may be in danger or it is a drink driving matter.

## The taped record of interview

If you are charged with a serious offence the police must tape record the explanation they give you about your rights. This explanation is called the “caution”. The police caution is recorded on tape at the beginning of a formal interview. The caution used by the police in a formal interview is:

“I must inform you that you are not obliged to say or do anything but anything you say and do may be given in evidence. Do you understand that?

I must also inform you of the following rights:

You may communicate with or attempt to communicate with a friend or relative to inform that person of your whereabouts.  
You may communicate with or attempt to communicate with a legal practitioner”.

The police must also tape record any questions they ask you and your answers if they want to use this information in court. The ITP must be there for the whole interview, and the police must ask them to say they are present so it is recorded on the tape.

The police must give you a copy of the taped record of interview. The tape is important for your lawyer – don’t lose it.

These rights are for your protection. It will help your case if you exercise these rights. You must tell the police that you want to exercise these rights. You should do this as soon as the police caution you. DON’T WAIT.

## Length of time police can hold you for

If you have been arrested and taken into custody for questioning the police can keep you for a reasonable time. There is no single definition of “reasonable time”.

If you are becoming unwell (or might become unwell if kept there for too long) tell the police the time you are being held for is unreasonable.

Whether you have been questioned for a reasonable time depends on the following:

- ▶ The number of offences involved.
- ▶ Whether holding you for questioning will make you unwell.
- ▶ The need for the police to read and collect information.
- ▶ Time needed to transport you to a place to be interviewed.
- ▶ The number of other people who also need to be questioned in relation to the offence.

## After you are questioned

After the police have spoken to you a number of things may happen:

- ▶ You may be released without being charged.
- ▶ You may be released but charged later. In this case the police will send you the charge on a later date.
- ▶ You may be charged and bailed to appear at court on a certain date. (See [Chapter 3 Bail](#)).
- ▶ You may be refused bail by the police, the bail justice or the court and kept in custody, whether in prison or hospital.

## Charges

Charge or Charges are when police formally accuse you of committing a crime. Once you have been charged you will have to go to court. Some charges are less serious than others. Most criminal law charges are heard in the Magistrates' Court. More serious cases are heard in the County Court and Supreme Court.

## Police Charge / Charge and Summons Sheet

Police Charge Sheets and Charge and Summons Sheets are blue sheets of paper that list charges against you by the police.

## Seeing a doctor about your mental illness or other health problems in the police cells

If you are in the police cells and want to see a doctor tell the 'watchhouse keeper' who is in charge of the police cells. If you ask to

Printer ID at which Identifiers Report will be printed	Total Number of Charges Submitted for this Defendant	LEAP FAX SEQUENCING Page No./Total No. of pages
--	--	---

## CHARGE AND SUMMONS

**Copy - CDEB/Police Brief**

Magistrates' Court General Regulations 69/2000 Form 7

<b>TO THE DEFENDANT</b>	Unsuitable Dates		
John Citizen Smith St Brighton	Preferred Dates		
	M <input checked="" type="checkbox"/>	F <input type="checkbox"/>	Co. <input type="checkbox"/>
			Date of Birth 27/02/68
You have been charged with an offence against the law. Read these pages to see what you must do.		Registration No. N/A	State
[1] MNI / JAID		Licence No. N/A	State

<b>Details of the charge against you</b>			
What is the charge?	I Defendant at Smithsville on 05/05/06 did steal 1 375ml bottle of Cascade beer.		
	[2] Sub-Incident Number	Offence Code	
	Offence Literal		
Under what law?	<input checked="" type="checkbox"/> State <input type="checkbox"/> C>Wealth <input checked="" type="checkbox"/> Act <input type="checkbox"/> Reg	<input type="checkbox"/> Other - <small>Specify</small> Act or Regulation No. 6231/1958	Section/Clause <small>(Full Ref.)</small> Section 74

see a doctor the police must call the Custodial Medicine Unit (see page 73 for details). The Custodial Medicine Unit employs doctors, nurses and psychiatric nurses. It is available 24 hours a day. If you are really unwell the police may take you directly to a hospital.

### Needing medication

The Custodial Medicine Unit will give you medication. In the police cells you will only be allowed to take medication that the Custodial Medicine Unit gives you. You should keep the name, address and telephone number of your doctor in your wallet and ask the Custodial Medicine Unit to contact him or her.

Ask your lawyer to keep the name, address and telephone number of your doctor on file.

### Access to methadone programs

Methadone is considered medical treatment. You have a right to obtain medical treatment when you are in police custody. If you want to receive methadone when you are in police custody:

- ▶ Tell the 'watchhouse keeper' that you want to see a doctor or nurse from the Custodial Medicine Unit.

- ▶ When you see a doctor or nurse from the Custodial Medicine Unit tell them you are on the methadone program.
- ▶ You or someone you know must tell them who your doctor is and the pharmacy where you collect your methadone. If they cannot get this information you will not receive methadone.
- ▶ Keep the name of your doctor and pharmacy where you collect your methadone in your wallet.
- ▶ Give the name of your doctor and pharmacy to a parent, guardian, case worker, lawyer or someone you trust. Ask the nurse or doctor to call them if you cannot remember who your doctor or pharmacist is.
- ▶ The police must organise for an original script for your methadone to be given to the Custodial Medicine Unit.
- ▶ The police must organise for your methadone to be couriered to the police cells.
- ▶ You may become very unwell if you are withdrawing from methadone. Tell the police immediately if you are becoming unwell.
- ▶ You do not have to pay for the methadone – the Custodial Medicine Unit will pay the doctor and the chemist.

## Transfers from police cells to prison or hospital

If you are not going to be released on bail you will be transferred to prison or hospital.

If you have a mental illness you must be put on a high priority list to be transferred out of the cells. It is very important that you tell the 'watchhouse keeper' of the police cells that you have a mental illness and that you want to be transferred. This information must be kept at the police station and registered with the people who transfer you. Each morning, a decision is made about who is highest priority for transfer; that is, who is most unwell and at risk. A psychiatric nurse is involved in the process of deciding priority for transfers and whether people should go to prison or hospital.

## Complaints about police

If you want to make a complaint against the police you should take action as soon as possible.

You should write down everything that happened to you as soon as possible. This includes the names of the police officers involved, the time and date of the incident and what happened. If you cannot do this because you are unwell or distressed ask a friend, relative, case worker or someone you trust to write down this information for you.

Speak to your lawyer before you make a complaint against the police. Statements you make may be used against you in your criminal case. It may be best to make an initial complaint and after your criminal case has finished make a full complaint (see page 74 for details of where to make a complaint).

### If you have been injured by police:

See a doctor as quickly as possible.

- ▶ Get someone to photograph the injuries.
- ▶ Write down or ask a friend, relative, case worker or someone you trust to write down as much information as possible about the person or people who injured you including name, rank, police station, etc.
- ▶ Write down the name of the last person who saw you before you were injured and the first person to see you afterwards.
- ▶ Contact a lawyer who will help you to make a formal complaint.

For more information in relation to the powers and processes referred to in this chapter, including different laws for people suspected of terrorism, refer to the booklet [Your Rights: Police Powers in Victoria](#) by Flemington and Kensington Community Legal Centre and Victoria Legal Aid.

## 3 Bail

Bail is when you are released on your promise that you will go to court to face charges on a certain day. This means that you are bailed on your “own undertaking” to appear at court. Some bail conditions you may agree to include:

- ▶ Reporting to a police station.
- ▶ Living at a certain place.
- ▶ Not interfering with police witnesses.
- ▶ Receiving treatment from a doctor, therapist or mental health clinic.

Other conditions that may be imposed by the police or a court before you are released on bail include:

- ▶ Depositing a sum of money with the police or courts before you are released.
- ▶ Another person putting up money for you. This is called a surety.
- ▶ A surety is usually a sum of money put up by a person that guarantees that you will appear at the date and place specified in the bail bond. If you do not turn up to court to answer the bail, the amount put up is given to the government.

If you appear at court you or the person who put the money up will receive the money back.

If you agree to bail conditions that involve accessing support services, it is important that they are actually available, because if you don't receive the services you will be breaching your undertaking. Always tell the police, your lawyer or the court if a breach of bail conditions was beyond your control.

## Undertakings of bail

An undertaking of bail is a form you must sign before you are released from police custody. When you sign the undertaking of bail you agree to the conditions of bail. If you breach these conditions you may be taken back into police custody and charged with breaching bail.

## Granting bail

Bail can be granted by the police, a bail justice or a court.

When the police charge you they must either release you on bail or bring you before a court. The police must release you on bail unless they consider it to be a serious case. If you have been bailed in relation to other alleged crimes the police may bring you before a court to decide if you can be bailed again.

If you have a mental illness, being in custody may be harder for you and you should tell the police and/or ask your doctor, case manager, relative or friend to tell the police.

## Disagreeing with bail conditions

You can object to bail conditions granted by the police, a bail justice or court. Tell the police if you believe that the conditions of bail, for example; reporting to the police station every day, are going to be hard to keep because of your mental illness.

If you object to the conditions the police must tell you either verbally or in writing that you can apply to the bail justice or court to review the decision. If you cannot read the information the police give you, ask them to read it to you. If you tell the police that you want the bail conditions they have imposed reviewed by a bail justice or court they must organise for this to happen as soon as possible.

You can also apply to the court to vary bail conditions.

## Issues to be taken into account for bail applications

- ▶ The nature and seriousness of the alleged offence.
- ▶ Your character, family history and background. This includes whether you have a mental illness, and whether that will make it harder for you to be in prison.
- ▶ Your previous bail history.
- ▶ The strength of the evidence the police have for the case against you.
- ▶ The attitude of the alleged victim of your crime to bail.
- ▶ Accommodation, supports and treatment available to you in the community. You may be able to get useful supports through the Credit Bail Support Program ([see page 73 for details](#)).

## Bail to a mental health facility

You might be able to be bailed to a hospital instead of being remanded in custody in prison if you need to be in hospital for your mental health or if prison will be harmful to your mental health.

## Being refused bail— remand

If you are refused bail you will be remanded in custody. If you are mentally unwell you may be transferred to the Melbourne Assessment Prison's Acute Assessment Unit, or the Thomas Embling Hospital, instead of being remanded in prison.

## Applying for bail more than once

If you are refused bail by the court you can apply to the court again for bail. If you were represented by a lawyer at the previous bail application you will only be granted bail on another application if your circumstances have changed since your last bail application or you have new information such as a doctor's report which was not presented last time. You can also apply to the Supreme Court if you are refused bail in the Magistrates' Court.

# 4 Court

## The Criminal Court

After the police charge you, the matter will go to court unless the police agree to drop the charges. It is very hard to get charges dropped, but in exceptional cases it may be possible. The charges can still be dropped after the matter has been to court for an initial hearing or hearings.

You may be found unfit to be tried because of mental illness (see page 34) or have the charges diverted under the Criminal Justice Diversion Program or be found not guilty due to mental impairment (see Chapter 5).

You can agree that you committed the offence and plead guilty, or fight the charges (this is also known as contesting charges) and the court will decide if you are guilty or not guilty.

Most cases are heard in the Magistrates' Court. The Magistrate decides whether you are guilty or not guilty, and the sentence if you plead guilty or are found guilty. The higher courts are the County Court and Supreme Court. In these courts the jury decides if you are guilty or not guilty and the judge decides the sentence if you plead guilty or are found guilty.

Charges will be heard in the Children's Court if you were under 18 at the time of the alleged offence/s and you are under 19 when the charges go to court.

## Lawyers

It is very important that you get legal advice and have a lawyer acting for you if you have a mental illness. No matter what you think about the charge you will be in a better position if you see a lawyer and get legal advice about what to do. Tell your lawyer that you have a mental illness. If you do not think you have a mental illness but you have been given medication to take by your doctor, tell your lawyer. This will help the lawyer decide how to help you.

## Finding a lawyer

If you can't afford to pay for a lawyer, you might be able to get free assistance from one of the organisations listed on page 72. If you are entitled to Legal Aid, you might be able to have a Legal Aid lawyer act for you, or a private lawyer who will be paid by Legal Aid.

If you have the money you can pay for a private lawyer. You or a family member/friend may already know a lawyer, or you can get one through the Law Institute ([see page 72](#)).

## Entitlements to Legal Aid

Legal Aid guidelines are strict. As well as on your income, and the income of anyone who can pay legal fees for you, whether you get Legal Aid will depend on what type of case it is and how serious it is. However, the Legal Aid guidelines allow for a grant of aid to be given to you in special circumstances if you have a mental illness. It is important that you or your lawyer tell Legal Aid that you have a mental illness when you put in your application.

## Contributions to Legal Aid

Depending on how much money you have, Legal Aid may not be completely free. You may have to pay a contribution towards the cost if you can afford it.

## Changing lawyers

If you are not happy with the service you are receiving from your lawyer you should speak to them about your concerns. You can always obtain a second opinion from another lawyer. You can also make a complaint against a lawyer if you do not think you have been treated fairly. Contact the Legal Services Commissioner ([see page 73 for details](#)).

If you do not want to continue to use a lawyer and you see another one, your original lawyer can keep your file if you owe money for work already done on your case.

# What to tell your lawyer

Before you see a lawyer, write down the questions you want to ask. If you are finding it difficult to write down questions ask a friend, relative or case worker to do this for you. You might also feel more comfortable if you have a trusted friend, relative or case worker with you when you see a lawyer.

## Information and things to tell your lawyer

- ▶ Whether you want to plead guilty or not guilty.
- ▶ You have a mental illness or your doctor believes you have one.
- ▶ What medication you are taking.
- ▶ Whether you were unwell when the police charged you with the offence/s.
- ▶ You could take your lawyer a letter from your doctor stating that you have a mental illness, how long you have been taking medication for your illness and if the mental illness or medication affected what you did.

## Things to ask your lawyer:

- ▶ Do they think I should plead guilty or not guilty?
- ▶ How serious is the charge?
- ▶ What court will it be heard in?
- ▶ If I plead guilty what sentence am I likely to get?
- ▶ Can I get Legal Aid?
- ▶ How much will it cost me if I cannot get Legal Aid?
- ▶ Should the case be adjourned so we can get a report from a doctor, psychiatrist, psychologist, case manager, etc?

## Going to court

The charge sheet given to you by the police will show the date you have to attend court. If you have seen a lawyer and they are going to represent you ask the lawyer when you have to go to court. Unless you have decided to plead guilty on the first court date, the case will not be fully dealt with then.

## Being on bail

If you are on bail you have agreed that you will attend court on the day your case is listed. If you do not attend court you can be charged with failure to answer bail. You must attend court on that date or take the steps below, or a warrant for your arrest will be issued. You must attend court even if you or your lawyer is going to adjourn your case, unless your lawyer has arranged with the court and police for bail to be extended in your absence. When you arrive at court speak to the Criminal Co-ordinator and ask for your bail to be extended.

## On bail and can't get to court

If you are sick or have some other very good reason why you cannot attend on the day you are due to appear in court ring the Criminal Co-ordinator and tell them. Also ring your lawyer and anyone else supporting you and tell them. If you can't ring the court ask someone else to. Your case may be adjourned to another day.

If you are sick or in hospital you will need to give the court a medical certificate to explain why you cannot be at court. Ask your doctor or support worker for a medical certificate. Ask someone to take the medical certificate to court or to fax it to court for you.

The most important thing to do is ring the court and tell the Criminal Co-ordinator if you are too sick or can't go to court for some other reason. If you do not do this a warrant may be issued for your arrest.

## Tips for going to court

Going to court is stressful for anyone, but can be particularly stressful if you have a mental illness.

- ▶ Make sure you have seen a lawyer before the court date so that you have time to explain your situation to your lawyer and get advice. It will also ensure that you have time to obtain references or reports or bring witnesses if your lawyer thinks this is a good idea.
- ▶ Have breakfast and take your medication: You may need to be at court for the whole day so make sure you eat something in the morning before court breaks for lunch. Take some food with you if you think you cannot get through the morning without eating.
- ▶ Don't be late: Get to court between 9.00am – 9.30am. This will give you enough time to see the Court Co-ordinator and your lawyer before your case begins.
- ▶ Bring a friend, relative or support worker. If you have a mental illness it may be good to bring someone with you to keep you company. The case could take some time. The Magistrate may also like to see that you are supported by other people in the community. Court network may be able to support you at court (see page 74).
- ▶ Dress: Make sure you look clean and neat. Dress comfortably. It is best not to wear shorts or tracksuit pants. Wear a casual suit or dress if you can.
- ▶ Be prepared: Make sure you have letters from your doctor, case manager, therapist or other support worker, and character references. Character references show the court your good qualities. The best type of reference is one which reveals that the referee knows all about the charges you face and still believes you are a good person.
- ▶ When you are in Court: Do not talk too loudly, smoke, eat or have a mobile phone switched on.

## Psychiatric services at court— Court Liaison Services

The Court Liaison Service provides psychiatric assessment and advice for people who have a mental illness and are referred by Magistrates, the police and lawyers at most Magistrates' Courts in Victoria. You can also contact the service yourself if you wish to.

A senior registered psychiatric nurse may be asked to assess your psychiatric condition. The nurse may be asked for a report to give to the court about how you can be diverted from the criminal justice system to the mental health system.

If you are in custody, the Magistrate may ask a senior psychiatric nurse to see you before you enter a plea of guilty or not guilty to police charges. Even if you do not think you have a mental illness you should talk to the psychiatric nurse about your situation as it might help your case. Anything you talk about must remain confidential unless you allow it to be used in court. However, it is best not to talk about the details of your charges with anyone else except your lawyer. The psychiatric nurse is not there to discuss your case with you, but rather to assess your mental health.

## Psychological and psychiatric reports

If the court is told about your mental illness, by a mental health worker, it may deal with your case in a more understanding and compassionate way.

Your lawyer may request a psychiatrist or psychologist to write a report. This report is independent from the court. It may be better for your case that you obtain an independent report through your lawyer rather than through the court. Your lawyer will be able to read the report and decide how it can best be used for your case. If you obtain a report through your lawyer it is to help your case.

When you plead guilty or if you are found guilty the court may order a psychiatric report before sentencing. This report will be done for court purposes only. Everything you tell the psychiatrist will be taken into account. This is not a report just to help your case, but to help the court decide what order to make.

## **Pleading guilty or not guilty**

You should always obtain legal advice before you decide to plead guilty or not guilty to police charges. You may have a general defence because you did not commit the crime. You may have a specific mental impairment defence because of the way an illness was affecting you—see the section on page 37 “Not guilty on the grounds of mental impairment”.

For information about what happens at the Magistrates’ Court if you plead not guilty, including the different types of hearings such as mentions, contest mentions and final hearings, contact Victoria Legal Aid and ask for a book called “Your Day In Court : A guide to criminal offences in the Magistrates’ Court” to be sent to you.

## **Too unwell for court process— Unfitness to be tried**

Special provisions apply to people whose illness means they are not able to fully participate in their court case.

Some mental illnesses such as personality disorders may not fall under that definition. You should speak to your lawyer and doctor about this. These provisions only apply to people who have a mental illness as defined under the Mental Health Act as a medical condition categorised by a “significant disturbance of thought, mood, perception or memory.”

If you are facing charges in the County or Supreme Court and have a mental illness a jury may find that you are unfit to stand trial. You are unfit if:

- ▶ You can't understand the charge or charges, the trial, or the evidence at the trial, or
- ▶ You can't make decisions about the trial, including whether you should plead guilty, which people you don't want on your jury, or what you want your lawyer to say.

If you are found unfit the judge must determine whether or not you are likely to become fit to stand trial over the next 12 months. If you become fit to stand trial the trial will continue. If you remain unfit to be tried, or it is unlikely that you will become fit to stand trial within 12 months, a special hearing must be conducted to determine whether one of the following applies to you:

- ▶ You are not guilty.
- ▶ You are not guilty on the ground of mental impairment.
- ▶ You committed the offence (This is not the same as being found guilty or convicted).

If you are found not guilty at this special hearing you must be released. If one of the other two findings is made, the court can release you unconditionally, or make a Supervision Order, as discussed in Chapter 5.

In the Magistrates' Court if you are too unwell to take part in the case and do not become well enough in a reasonable time the Magistrate may just adjourn the case "sine die" which means it will not proceed.

# 5 Diversion and the Defence of Mental Impairment

## Criminal Justice Diversion Program

If you have a mental illness your case may be diverted from the criminal justice system without you being found guilty or convicted. You will not receive a criminal record.

There is a Diversion Co-ordinator at most Magistrates' Courts. Even if there is no Diversion Co-ordinator at the court you can apply for diversion.

In order to be eligible for the Diversion Program certain criteria must be met:

- ▶ The offence is triable summarily (in the Magistrates' Court).
- ▶ You admit to the facts of the case.
- ▶ There is sufficient evidence to gain a conviction.
- ▶ Diversion is appropriate in all the circumstances.

A request for diversion may be made by you, your lawyer or support person, the court or the police. The diversion application will have to be approved by a senior police officer at the station, usually on the basis of a letter from a mental health professional. You, and finally the court, will have to agree that diversion, and the proposed conditions, are appropriate.

A diversion hearing is conducted before a Magistrate. At the diversion hearing the Magistrate will assess your suitability for diversion and if suitable a diversion plan will be developed which will probably include conditions such as one or more of the following:

- ▶ Apologise to the victim by way of letter or in person.
- ▶ Compensate the victim.
- ▶ Attend a particular service for counselling or treatment as directed.
- ▶ Perform community work.
- ▶ Make a monetary donation to a charity.
- ▶ Attend a defensive driving course.

The charges will be adjourned while the diversion plan is undertaken. You do not need to attend court on the return date of the charges but you or your lawyer will need to file proof you have complied with all conditions imposed before the return date to court. When the case returns to court and you have fulfilled the conditions imposed by the court the charges are 'discharged'. They will not form part of your formal criminal record though they will be part of your police record. They should not be provided to others when a police check is done.

If you do not fulfil the conditions imposed by the court for diversion the Magistrate may extend the time for you to complete the set tasks. If you still don't comply after an extension/s, the case will be set for hearing as if it was the first listing at the Magistrates' Court.

## **Not guilty on the grounds of mental impairment**

The defence of "mental impairment" applies if your mental illness meant that you did not know what you were doing, or that what you were doing was wrong.

If you want to raise the defence of mental impairment you will need to have some psychiatric evidence for example; a letter or report from a psychiatrist, stating that in their opinion at the time of the offence you were suffering from mental impairment enough to not be responsible for your actions.

## **Mental impairment defence in the Magistrates' Court**

If you are charged with an offence that happened because you were ill and the Magistrates' Court finds you not guilty because of mental impairment the Magistrates' Court must discharge you. You will receive no penalty but there will be a record that you are not guilty due to mental illness of the offences.

There is a risk that the Department of Public Prosecutions will try to get the matter heard in the higher courts where a Custodial or Non-Custodial Supervision Order may be made. This is a very serious risk that could affect your liberty.

You should seek advice from a lawyer about whether you can successfully use this defence and whether it is a good idea in your circumstances.

## **Orders the County and Supreme Court can make**

If the County Court or Supreme Court finds you not guilty on the ground of mental impairment or unfit but to have committed the offence the judge will decide the appropriate order to make.

The Judge can make the following orders:

- ▶ Unconditionally release you, or
- ▶ Put you on a Supervision Order (either Custodial or Non-Custodial) and make you a forensic patient.

If you are a forensic patient you are a patient under the Mental Health Act, and the rights set out in Chapter 7 apply, except for the rights about leave and transfers.

## **Supervision Orders**

If the court is considering a supervision order it may be either a Custodial or Non-Custodial Order depending upon the circumstances of your case. If you are ordered on a Custodial Supervision Order you will usually be sent to the Thomas Embling Hospital. You should not be sent to prison unless the court cannot find an appropriate place for you to be held. If you are in prison under a Supervision Order the Secretary of the Department of

Justice can transfer you to hospital. If you are put on a Non-Custodial Supervision Order you will be living in the community and have to abide by conditions.

In deciding what order to make, the court must put the least restrictions on your freedom consistent with the safety of the community.

### Length of a Supervision Order

Supervision Orders last for an indefinite period. However, you can apply at any time for leave or to have your Order varied or revoked. Also, you will automatically have a major review by the Court when you reach your nominal term. The nominal term is 25 years if the offence is murder. It is whatever the maximum term is for “serious offences” such as rape, incest, intentionally causing serious injury, abduction or detention, kidnapping and armed robbery. It is half whatever the maximum sentence is for other offences.

### Leave if you are on a Supervision Order

#### Special leave

Leave for up to 24 hours, or 7 days for medical treatment can be granted by the authorised psychiatrist responsible for your treatment. It must be for a specific purpose and must not seriously endanger members of the community. You can appeal to the Forensic Leave Panel if you do not get that leave.

#### On ground and limited off ground leave

The Forensic Leave Panel can grant forensic patients On Ground Leave, which allows you to be in the grounds of the hospital. It can also grant day leave between 6.00 am and 9.00 pm, and overnight leave up to 3 days per week.

The Panel can grant these kinds of leave for up to 6 months. The Chief Psychiatrist can suspend this leave if he or she believes anyone’s safety will be seriously endangered by the leave.

## Extended leave

If you are on a Custodial Supervision Order you can apply to the court that sentenced you for Extended Leave. This type of leave effectively allows you to live in the community with conditions. Extended leave can be granted for periods of up to 12 months at a time and may be granted more than once. Extended Leave can be cancelled by the court if it believes anyone's safety will be seriously endangered by the leave.

## Applying for variation or revocation of a Supervision Order

If you are on a Custodial Supervision Order you can apply to the court at any time to have the order varied. It must first be varied to a Non-Custodial Supervision Order before it can be revoked. You have to have been on Extended Leave for at least 12 months before your order will be varied to a Non-Custodial Supervision Order. If your application is refused, you cannot make a further application for 3 years unless the Court orders you can come back sooner.

If you are on a Non-Custodial Supervision Order you can apply to court at any time for variation or revocation of the order. A court cannot revoke a Supervision Order unless it has been a Non-Custodial Order for at least 12 months.

A court can vary the condition of a Non-Custodial Supervision Order or vary it back to a Custodial Order if you fail to comply with it.

## Major Review

Your Major Review takes place once you reach the nominal term of your order. At that Review, if you are still on a Custodial Supervision Order the court must vary it to a Non-Custodial Supervision Order unless it believes your safety or the safety of members of the public will be seriously endangered. If you are on a Non-Custodial Order the court may confirm the Order, vary it or completely revoke it.

You should not wait for the Major Review, but consider applying as soon as you can for leave and then variation or revocation of your order.

### Suppression Orders

In court proceedings involving the mental impairment defence, varying or revoking a Supervision Order, or applying for leave you can apply for a Suppression Order. A Suppression Order can stop the media publishing information about the case including anything which identifies you or other people involved in the case. People involved in unfitness to be tried proceedings (see Chapter 4) can also seek Suppression Orders. Ask a lawyer about this.

### Transfer of Forensic Patients

The Chief Psychiatrist can order that you be transferred to another mental health service if it would be for your benefit or necessary for your treatment. If you object to a transfer you can appeal to the Forensic Leave Panel.

The Minister for Health can make an order to transfer you interstate.

### Interstate Forensic Patients

If you have been placed on an order like a Supervision Order interstate and you abscond to Victoria you can be apprehended and placed on an interim disposition order. The Supreme Court will review the order and either send you back, place you on a Victorian Supervision Order or unconditionally release you.

### Federal Forensic Patient Order

The court can place you under this order if your charge related to a federal offence and you were found not guilty due to your illness. If you are on one of these orders you are a forensic patient, and the rights in Chapter 7 apart from leave, transfer and absence without leave apply to you. Federal forensic patients can apply for leave granted by the Forensic Leave Panel but not Extended Leave from the court.

If you are a forensic patient under federal law and there are urgent medical or security reasons or the Commonwealth Attorney-General orders it you can also be transferred.

# 6 Sentencing if you are found guilty

## Principles of sentencing

If you are found guilty the court must have regard to sentencing principles. These principles are:

- ▶ To punish you in a way the court thinks is just in all the circumstances.
- ▶ To deter or try and make other people think that it is not a good idea to commit crimes that you have been charged with.
- ▶ To rehabilitate you.
- ▶ To disapprove of the crimes you have committed.
- ▶ To protect the community.

If you have a mental illness that contributed to you committing the offence the sentencing principles about deterring others and disapproval of your behaviour should only be taken into account by the court to a limited extent. Also, the court will take into account that a sentence will weigh more heavily upon a person who has mental health problems than on a person who does not.

It will usually help your case if the Magistrate or Judge is aware of your mental illness before you are sentenced. The Magistrate or Judge needs all the information so they can give you a fair sentence. If you have a psychiatrist or doctor already, it is a good idea ask them to write a report so you can take it to court. Show it to a lawyer before you give it to the court. The court will take into account that you are already getting treatment. It is also important for the court to know if you are on a Community Treatment Order (CTO). The court may be more lenient if it knows about your mental illness and treatment.

## Types of sentence

The type of sentence you will receive and its severity will vary depending upon the offence, your prior convictions, what the court was told in your plea and your mental illness. There are different types of sentencing options depending upon how serious the case is and whether you have been to court before.

## Sentences without conviction

A court can order your charges be dismissed, or impose an adjourned undertaking (also known as a Good Behaviour Bond), a fine, a Community Based Order, and some types of Mental Health System Orders without conviction. Advantages of a without conviction sentence are:

- ▶ It means the court thought that the offence was not serious in all the circumstances.
- ▶ It means you can tell people you have not been convicted.

A court may not convict you but you have still been found guilty of committing an offence. You still have a criminal record, but it is better than having a conviction because when people ask you if you have a conviction you can say “no”. It will come up on your record that you have been found guilty of an offence though, and can be accessed by police and a court if you are found guilty of further offences in the future. For more information about the implications of your record see the booklet “Getting Past Your Past: Moving on from a police record in Victoria” available from the North Melbourne Legal Service.

## Dismissal or discharge

If you have been found guilty of a very minor offence the court may just record that you are guilty without a conviction and impose no sentence at all.

If the matter is slightly more serious the court may record a conviction and discharge you without any further sentence.

## **A bond with or without conviction**

You may be placed on a Good Behaviour Bond with or without conviction. You can be placed on a “Good Behaviour Bond” for up to 5 years. This is also known as an adjourned undertaking. Conditions can be placed on the bond such as seeing a doctor. If you already have a doctor you would like to see you should tell the court.

If you breach the bond by committing another offence or not complying with the conditions you may be taken back to court again. This must be done within 3 years of another offence being committed.

## **Fines with or without conviction**

You may be ordered to pay a fine. You may receive a fine with or without conviction.

The size of a fine will vary. The court should be made aware of your financial circumstances. The Magistrate or Judge will give you up to 3 months to pay a fine. If you cannot pay the fine in this time you can organise with the Court Co-ordinator for a longer period to pay. If you cannot pay a fine you can also ask to do community work. If you do this make sure that you tell the court you have a mental illness and the type of work you think you could do. Try to get a supporting letter from your doctor, psychiatrist or case manager.

## **Serving time for fines**

If you are in jail you can serve time for fines you have received at the same time as you are serving time for other issues. If you are in hospital they don't get 'paid off' via detention in this way.

## Community Based Order (CBO) with or without conviction

A court may make a Community Based Order if you are found guilty of an offence punishable by imprisonment or a fine of more than \$500. The aim of a CBO is to enable you to remain in the community under supervision focused on monitoring and addressing offence related behaviour. A CBO has a number of conditions.

A CBO may be imposed for up to 2 years with or without conviction.

Before you receive a CBO the court will order a pre sentence report from Community Correctional Services. This is a separate organisation from the court and it will supervise your sentence. A Community Corrections Officer will assess whether you are suitable for a CBO. The Community Corrections Officer will take into account:

- ▶ Nature of the offence.
- ▶ Prior criminal history.
- ▶ Employment and family history.
- ▶ Your mental illness.
- ▶ Drug and alcohol history.
- ▶ Programs which may reduce the likelihood of you re-offending.
- ▶ Your willingness to consent to the making of the order.

The assessment is normally completed at court. The assessment will result in a recommendation to the court about whether you are suitable for a CBO. Copies of the report are given to the court, your lawyer and the police.

The report will recommend a type of CBO that suits your situation. If you have a mental illness the CBO may or may not include community work with conditions for psychiatric and psychological treatment or drug and alcohol treatment.

It is important to get a letter from your doctor, psychiatrist, psychologist or case manager saying that you cannot work if that is the case.

## Conditions all Community Based Orders have

- ▶ Not to commit another offence punishable by imprisonment while the order is in force.
- ▶ To report to a nominated Community Corrections Centre within 2 working days of receiving the order.
- ▶ To report and receive visits as directed by the Community Corrections Officer who is appointed to supervise your order. (You should tell this person that you have a mental illness. You do not have to talk to him or her about the nature of your mental illness or any other details in relation to your personal life. If you are unable to attend for any supervision appointments you should notify this person immediately).
- ▶ To notify a Community Corrections Officer within 48 hours of any change of address or employment.
- ▶ Not to leave the state without the permission of a Community Corrections Officer.
- ▶ To obey all lawful directions of Community Corrections Officers.

## Conditions your Community Based Order may also have

### Community work

The court can impose up to 500 hours of unpaid community work. Talk to your Community Corrections Officer about the type of work you believe you may be able to manage with your mental illness. For example: if you cannot work for any more than 4 hours at a time, cannot work in hot or cold places etc. Get a letter from your doctor, psychiatrist, psychologist or case manager explaining this situation.

If for any reason you cannot attend for community work you must always inform your Community Corrections Officer.

### **Treatment conditions**

Assessment and treatment allows for a wide range of interventions which may include assessment, testing and treatment for drugs and/or alcohol and/or medical and psychiatric problems.

If you have a mental illness you may be required to attend an Area Mental Health Service. If you have a doctor, psychiatrist, psychologist or case manager that you are already seeing tell the Community Corrections Officer.

The Community Corrections Officer cannot have access to your medical file unless you give permission. Speak to a lawyer about whether you should give permission.

### **Other possible conditions**

A CBO may also include conditions requiring you to be under the supervision of a Community Corrections Officer, participate in educational or other programs, or any other necessary or desirable conditions.

### **Inability to meet the conditions of your CBO, or attend community work or appointments**

If you cannot meet the conditions of your CBO, or attend for community work or appointments you must tell your Community Corrections Officer.

If you do not attend community work or appointments 3 times without medical certificates or have an explanation that is acceptable, you will receive a final warning. Any unacceptable absences after this time will result in your matter going back to court unless there are exceptional circumstances.

You will be considered a Special Needs Offender if you have a mental illness. This means that your needs and obligations as an offender are recognised as being different because you have a mental illness. It is very important that you tell your Community Corrections Officer if you are unwell and you cannot do community work or attend the centre for appointments.

## **Breaching Community Based Orders**

If you breach the CBO by not attending for community work or appointments, or re-offending, you may be arrested and the case may go back to court. The original charges will be heard and a report from the Community Corrections Officer will be given to the court.

If you are found guilty of not complying with the order the court may impose a fine of up to \$1,000 with or without conviction and vary the order, confirm the order or re-sentence you for the original offences. Any community work you have completed or appointments you have attended will be taken into account by the court. However, even almost total compliance will not necessarily prevent a custodial sentence.

The Community Corrections Officer and the court should be made aware if you were unable to complete the CBO because of your mental illness.

## **Intensive Correction Order (ICO)**

An Intensive Correction Order is a sentence of imprisonment served by way of intensive correction in the community.

An Intensive Correction Order may be made for a period of up to 12 months. A Community Corrections Officer will assess whether you are suitable for an Intensive Corrections Order. The Community Corrections Officer will take into account the same factors when assessing you as discussed in the Community Based Order assessment.

Intensive Correction Orders require strict compliance. You should tell your lawyer and the court if your mental illness means that you cannot do it. Try to get a supporting letter from your doctor, psychiatrist, psychologist or case manager.

As well as conditions like a Community Based Order, an Intensive Correction Order requires you to report twice a week and do 12 hours of programs a week, and may have a special condition that requires you to participate in a specific residential or community based program as well.

The consequences of breaching an Intensive Correction Order are much more serious than a Community Based Order, and can include imprisonment. If you realise that you cannot complete an Intensive Correction Order you can apply for it to be cancelled and another sentence imposed.

## Suspended sentence

In 2006 the Government announced it would restrict the use of suspended sentences and might completely abolish them. They may be replaced with other types of orders. You should make sure you get up to date advice about this.

A court may order a sentence of imprisonment and suspend this for up to 24 months. For example; the court may order that you are to serve 2 months in prison for committing offences but this is suspended for 12 months. If you do not commit any offences in the following 12 month period you will not go to prison.

A court may suspend either part of your prison sentence or all of it. For example; you may receive a 12 month prison sentence and 4 months of that sentence is to be served immediately in prison and the other 8 months is to be suspended for 12 months. This means that you will go to prison for 4 months and when you are released, if you do not commit any other offences for 12 months you will not be required to serve the other 8 months of the sentence.

## Breach of Suspended Sentence

If you are found guilty of committing another offence which carries a maximum sentence of prison while you are on a suspended sentence, you may have to serve the original prison term imposed by the court that has been suspended. For example; if you were sentenced to 4 months imprisonment suspended for 12 months and you are found guilty of stealing lollies from a shop the court may sentence you to the original 4 months imprisonment.

You will be sent to prison if you breach your original sentence unless the court believes that it would be unjust in light of exceptional circumstances which arose after the imposition of the suspended sentence.

If you committed an offence when you were unwell the court may consider this to be exceptional circumstances and may not send you to prison. It is important to tell your lawyer and the court about your mental illness and get a letter from your doctor, psychiatrist, psychologist or case manager.

## **Combined Custody and Treatment Order**

A court may order you to serve a Combined Custody and Treatment Order if it finds that drugs and/or alcohol contributed to you committing an offence. You will only be sentenced in this way if you would have received a 12 month prison sentence for the offence. You must serve at least 6 months in prison and then be released for up to another 6 months of the sentence in the community but with conditions. These conditions may include obtaining treatment for drug and/or alcohol problems.

Many people who have a mental illness also self medicate with drugs and/or alcohol. Before you are sentenced to a Combined Custody and Treatment Order you will be assessed by a Community Corrections Officer. You should inform them that you have a mental illness and if you self medicate with alcohol and/or drugs.

All Combined Custody and Treatment Orders have conditions requiring you to:

- ▶ Not commit an offence in Victoria or elsewhere punishable on conviction by imprisonment during the period of the order.
- ▶ Report to a Community Corrections Centre within 2 days of being released from custody.
- ▶ Undergo treatment for drug or alcohol addiction as specified in the drug and alcohol pre-release report.
- ▶ Report to and receive visits from a Community Corrections Officer.

- ▶ Notify the Community Corrections Officer of any change of address or employment within 2 days.
- ▶ Not leave the State without permission from the Community Corrections Officer.
- ▶ Obey all lawful instructions and directions from a Community Corrections Officer.

They may also include drug or alcohol testing and any other drug or alcohol conditions considered necessary or desirable.

Before you are released a drug and alcohol pre-release report will be prepared by the Community Corrections Officer. This report will outline what type of program you will be required to participate in after you are released from prison.

## **Drug Treatment Orders from the Drug Court**

If you have drug problems and have committed drug related offences (not sexual or violent offences) and would otherwise be sent to prison you can be put on a drug treatment order by the Drug Court. The Drug Court is based at Dandenong Magistrates' Court, but charges can be transferred to there from other courts at any time before you plead or are found guilty.

Drug treatment orders have conditions attached. If you breach conditions you may be required to serve time in prison.

## **Deferral of sentence if you are aged between 18 and 25 years**

If you are under the age of 25 years at the day of the court hearing the Magistrate or Judge may defer your sentence for up to 6 months. This means that the court does not make a decision about the penalty until you return to court. During this time the court may place conditions on the deferral of sentence to deal with factors contributing to criminal offending for example; the court may place conditions such as: attending an Area Mental Health Service to obtain medical treatment for your mental illness, drug and alcohol counselling, finding suitable accommodation etc.

On returning to court your behaviour during the deferred period will be taken into account before you are sentenced.

## **Imprisonment**

The court can impose 2 types of prison sentences. One type is a straight prison sentence. For example, you are to serve 6 months in prison. The other type is a prison sentence with a non-parole period. For example; you may receive an 18 month prison sentence under which you are entitled to be reviewed for parole after 12 months. Any time you have been on remand in prison or hospital will be taken off the sentence.

### **Being mentally unwell in prison**

When you first arrive at prison you will be seen by prison health care. The prison health care is separate from the corrections staff. You should tell the medical team that you have a mental illness or if a doctor thinks that you do. Your medication will be given to you in prison by the medical team.

When you arrive at prison you will be told what the procedure is for seeing a doctor or nurse. Medical clinics are not open daily for non-urgent matters. If it is not urgent you will usually make a request through your Unit Officer who will put your name on a list to see a doctor or nurse at the next available appointment. If you want to see a psychiatric nurse you may need to fill in a form that is usually available at your unit. These forms are collected daily and you will be booked into the next available appointment.

If you are not happy about the mental health services you are receiving in prison, you can complain to the Office of the Chief Psychiatrist, or the Health Services Commissioner ([see contact details on page 74](#)).

## Hospital Transfer Orders (HTOs) and Restricted Hospital Transfer Orders (RHTOs)

If you are very unwell ask your Unit Officer to contact the medical clinic immediately. Women who are very unwell because of mental illness may be transferred to the Women's Care Program at the Thomas Embling Hospital. Men may be transferred to the Melbourne Assessment Prison's Acute Assessment Unit in Melbourne, which is a prison hospital unit that caters for prisoners with a mental illness, or to the Thomas Embling Hospital. The programs in these hospitals are directed towards patients from prison who are in need of psychiatric assessment and acute care and treatment. You can sometimes be transferred to an ordinary psychiatric hospital.

You can be transferred if a psychiatrist recommends it, if you meet the criteria set out on page 56 and you require immediate treatment. If you think you should be transferred to hospital ask the medical clinic to have you assessed by a psychiatrist. You can complain to the Office of the Chief Psychiatrist if you believe you should be transferred but cannot get a psychiatrist to recommend it. They may be able to assess your case and liaise with a psychiatrist at a hospital. If you are transferred on an HTO you are an involuntary patient under the Mental Health Act, and if you are transferred on an RHTO you are a security patient under that Act. In both cases the rights set out in Chapter 7 apply to you. The authorised psychiatrist can attach any security conditions they consider necessary to a security patient's order.

If you do not want to be in hospital and want to go back to prison ask your psychiatrist to transfer you back. If they refuse to send you back to prison you can appeal to the Mental Health Review Board (MHRB) (see [contact details on page 73](#) and [pages 67–68](#)).

There is a specific unit at Port Phillip Prison for male prisoners who have a mental illness called St. Paul's. This is a psycho-social rehabilitation unit. In this unit you are seen by doctors, nurses, psychiatrists, etc. You are also taught about your mental illness and how to manage it. You can also learn how to cook, read, write and even do a TAFE course. You should ask someone from the medical clinic or your Unit Manager, how to get into the program at St Paul's. Women and men should also have these opportunities at the Thomas Embling Hospital.

The prison staff cannot have access to your medical file unless you agree. You should get legal advice before you give anyone in prison permission to look at your medical file. They can only breach your confidence under very special circumstances ([see page 64 in relation to confidentiality](#)).

## Parole

When you are sentenced you may receive a sentence with the opportunity for parole. For example; you may receive an 18 month sentence with a non-parole period of 12 months. You will be reviewed by the Adult Parole Board ([see page 73](#)) to see if you can be released after 12 months in prison.

The Parole Board will consider a number of different criteria before deciding whether to release you from prison. They will look at the crime you have committed, your plans for release, how your mental health has been while you have been in prison, reports from psychologists, psychiatrists and the Community Corrections Officer, your attitude to offending and your mental illness. The Parole Board will want to know how you are going to manage your mental illness when you are released into the community.

The Parole Board members include Judges from the Supreme Court, County Court, Magistrates' Court, the secretary to the Department of Justice and community members. If you do not want to go by yourself you can ask for someone to go with you. You will need to write a letter to the Parole Board and ask permission for someone else to attend with you. This person cannot talk for you or ask questions but it might be helpful for you if you have a person you

know to be there to support you. Write down things you want to ask or tell the Parole Board. Some things you could tell them include:

- ▶ How you have managed your mental illness.
- ▶ Courses or work you have done in prison.
- ▶ Things you plan to do when you are released from prison.
- ▶ Support and treatment you will have when you are released from prison.

The Parole Board will decide the conditions or rules you must follow if you are granted parole and these are written on your parole order. Some parole conditions could be to attend an Area Mental Health Service to obtain treatment for your mental illness, attend a drug and alcohol rehabilitation program, stay away from certain places or people, etc. If you do not comply with your Parole Order the Parole Board may cancel your parole and send you back to prison.

If you are not granted parole you cannot appeal against the decision of the Parole Board. However, you can ask for your case to be reviewed again by the Parole Board. You must write to the Parole Board and request that your case be reviewed again. It will be helpful to your review if you state in the letter what has changed since they did not grant you parole and what things you do not think they took into account.

## Home Detention Orders

For some less serious offences the court can make a home detention order requiring you to be at your home address between certain hours and be electronically monitored, instead of being in prison. Home detention orders can only be made if you were sentenced to 12 months imprisonment or less. These orders also contain other stringent conditions, and you should seek legal advice.

## Mental health system orders made by a court

As well as being transferred from prison to hospital on an HTO or RHTO (see page 53) you may be sent straight to hospital by the Magistrate or court after you are found guilty.

The orders available include Assessment Orders (AOs), Diagnosis, Assessment and Treatment Orders (DATOs), Restricted Involuntary Treatment Orders (RITOs – before October 2006 these were known as Hospital Orders) and Hospital Security Orders (HSOs).

These orders can only be made if:

- ▶ You are found guilty.
- ▶ The court is satisfied that you appear to be mentally ill and require treatment for the illness. You are mentally ill if you have a medical condition categorised by a “significant disturbance of thought, mood, perception or memory.” Some mental illnesses such as personality disorders may not fall under that definition. You should speak to your lawyer and doctor about this.
- ▶ The treatment can be obtained by admission to and detention in an approved mental health service.
- ▶ Because of your mental illness treatment as an involuntary patient is necessary for your health and safety (whether to prevent a deterioration in your physical or mental condition or otherwise) or for the protection of members of the public.
- ▶ The court has received a report from the authorised psychiatrist of the approved mental health service to which it is proposed to admit you recommending the proposed admission, and stating the service is able to treat you.

People on AOs, DATOs, RITOs and HTOs are Involuntary Patients.  
People on RHTOs or HSOs are security patients.

## Assessment Orders (AOs)

If you have been found guilty of an offence (and whether or not you have been convicted) and the court has not received a psychiatrist's report the court may order you to be detained as an involuntary in patient in an approved mental health facility for up to 72 hours for an assessment to be made of your suitability for a mental health system order. The court must receive written advice from a psychiatrist from the hospital that they have the facilities to do the assessment.

When you attend the hospital, a psychiatrist will make an assessment of your mental illness and write a report for the court. After 72 hours you will be returned to court for sentencing. If you are suitable you may be ordered to serve an RITO or HSO. The time spent in hospital will be taken into account when you are sentenced.

You can appeal to the MHRB but you are unlikely to get a hearing within the 72 hours.

## Diagnosis, Assessment and Treatment Orders (DATOs)

If you have been found guilty of an offence, and the court has received a psychiatrist's report recommending admission, the court may order you to be detained as an involuntary in patient in an approved mental health facility for up to 3 months for diagnosis, assessment and treatment.

You will have an automatic review within 8 weeks by the MHRB, and can appeal to them at any time if you want to leave the hospital and go back to court to be sentenced (see pages 67 and 73).

It is possible that during this time you may be discharged from involuntary status by the authorised psychiatrist or the MHRB but you will still be subject to a sentencing decision by the court.

After the end of the 3 month period you will be returned to court for sentence. The time spent in hospital will be taken into account when you are sentenced.

## Restricted Involuntary Treatment Orders (RITOs)

If you have been found guilty of an offence that is not a “serious offence” under the Sentencing Act and whether or not you have been convicted, a court can put you on an RITO and send you to hospital instead of imposing a sentence and sending you to prison. Sentencing Act “serious offences” include murder, manslaughter, rape and some other sexual assaults, armed robbery, abduction or detention, false imprisonment, intentionally causing serious injury and threat to kill. These orders must be made for a limited period and can last up to 2 years. RITOs are used to allow you to receive inpatient treatment for your mental illness if the criteria set out on page 56 apply to you. They will also consider your current mental condition, medical, psychiatric and forensic history, and social circumstances.

On an RITO the court will order that you be sent to an approved mental health service for detention as an involuntary patient. While you are in hospital the rights set out in Chapter 7 apply to you. You will usually be sent to the Thomas Embling Hospital. You do not have to go back to court again.

The Chief Psychiatrist or the MHRB can discharge you from the order. If you want to be discharged from the order at any time you can appeal to the MHRB. When you are discharged you will not go back to prison. You might be discharged completely but you are more likely to be discharged on a Restricted Community Treatment Order (RCTO) (see next page).

## Restricted Community Treatment Orders (RCTOs)

An RCTO can only be made if you have received an RITO. The order will be made if the authorised psychiatrist or Chief Psychiatrist believes that you still need to be on an order to receive treatment for your mental illness but you do not need to be in hospital. An authorised psychiatrist may apply to the Chief Psychiatrist on your behalf to make an RCTO.

An RCTO can only be made if you meet all the criteria in the Mental Health Act. The criteria are:

- ▶ That you appear to be suffering from a mental illness that requires treatment.
- ▶ The treatment can be obtained by making you subject to an RCTO.
- ▶ You should be made subject to the RCTO for your health and safety or for the protection of members of the public.

You must be informed about the order, the grounds on which it has been made and be given a copy. Unless you are discharged early by the Chief Psychiatrist or the MHRB, the RCTO expires when the term of the original RITO ends.

The authorised psychiatrist or Chief Psychiatrist can put any conditions on an RCTO that they believe are appropriate. The authorised psychiatrist, the Chief Psychiatrist or the MHRB can vary the conditions on an RCTO.

If the monitoring doctor thinks at any time that the RCTO criteria no longer apply or that treatment cannot be obtained under your order they must notify the Chief Psychiatrist. The Chief Psychiatrist must discharge you if they believe you no longer require involuntary treatment. If the authorised psychiatrist or the Chief Psychiatrist believes you need to be in hospital for treatment they have the power to revoke (call back) your RCTO which means you will have to return to hospital. The staff must inform you that your order has been revoked and that you have to go to a mental health service.

The MHRB will automatically review an RCTO after 12 months. You can also appeal to the MHRB. The MHRB can discharge you completely as an involuntary patient or revoke the RCTO and send you back to hospital if they believe you need to be there. The MHRB can also vary the conditions.

## Hospital Security Orders (HSOs)

This order is a sentence. A court can sentence you to an HSO and make you a security patient instead of sentencing you to prison if the criteria on page 56 apply to you. A court is not able to make an HSO unless, if it was not for your mental illness, the court would have imposed a prison sentence. The court will usually convict you as well as recording a finding of guilt before putting you on an HSO.

The court will order a fixed period of detention with a non-parole period. For example; the HSO will state that you are ordered to serve 12 months with a non-parole period of 3 months. You will then be admitted and detained as a security patient, probably at the Thomas Embling Hospital. The authorised psychiatrist can attach any security conditions they consider necessary to the order. Once on an HSO you are a patient under the Mental Health Act and the rights set out in Chapter 7 apply to you.

If you are discharged from hospital before the end of the set period you will be sent back to prison for example; if you have been sentenced to a 12 month HSO and you are in hospital for 3 months and the authorised psychiatrist or the MHRB makes a decision that you do not meet the criteria set out on pages 56 you will be sent to prison to serve the rest of the 9 month sentence. You cannot be held at the mental health facility for treatment as a security patient for any longer than the court has stated in the fixed term sentence. However, if a senior psychiatrist thinks that you still need treatment after the fixed term sentence is lapsed you may be kept in hospital as an ordinary involuntary patient under the Mental Health Act, or released on a CTO.

If you become an ordinary involuntary patient in hospital or on a CTO at the end of your sentence you have appeal rights and should see the booklet Patients' Rights: A Self Help Guide to the Mental Health Act, which you can get from the Mental Health Legal Centre ([see page 72](#)).

If you do not want to be in hospital and want to serve the rest of your time in prison ask your psychiatrist to transfer you to prison. If he or she does not agree to transfer you from hospital to prison you can appeal to the MHRB.

## Compensation and Restitution Orders

In addition to the orders already described if you are found guilty of theft you may be ordered to pay the money back or return the goods.

If you are found guilty of an offence resulting in pain and suffering, or loss, destruction or damage to anyones property, you may be ordered to pay compensation in addition to any of the orders discussed previously.

These orders cannot be made if you are found not guilty on the grounds of mental impairment ([see Chapter 5](#)). Talk to a lawyer about these orders.

# 7 Your Rights on Mental Health System Orders

If you are on any of the mental health orders referred to in Chapter 6 you should get a printed statement of your rights. All the rights set out in the following chapter apply to people on AOs, DATOs, RITOs, HSOs, HTOs and RHTOs. For forensic patients (see Chapter 5) all these rights except those regarding leave, transfer and leave of absence apply.

## Treatment

It is your right to receive the best possible care and treatment. You have the right to be involved in planning your treatment. However, if your psychiatrist believes that a certain type of treatment is necessary, that treatment can be given to you even if you refuse. You also have the right to a second opinion about your psychiatric condition and treatment. You should speak to a lawyer if you do not agree with the treatment you are receiving.

If you are not happy with the treatment you are receiving you can complain to the Office of the Chief Psychiatrist, or the Health Services Commissioner. An appeal to the MHRB might also result in a change to your treatment. You can also ask a community visitor to visit you and help you argue your case (see page 75 for contact details).

The Mental Health Act sets out a number of Principles of Treatment and Care which apply to you. To find out what they are, you should see the booklet Patients' Rights: A Self Help Guide to the Mental Health Act, available from the Mental Health Legal Centre.

## Treatment Plans

You have the right to a Treatment Plan. This should be prepared, reviewed and revised on a regular basis as required. It should include a brief clear statement of the treatment to be provided by the Mental Health Service and who is responsible for providing it.

In preparing your Treatment Plan your doctor must take into account:

- ▶ your wishes and
- ▶ the wishes of your guardian, family member or ongoing carer unless you object and
- ▶ whether the treatment is only to promote or maintain your health or wellbeing and
- ▶ any beneficial alternative treatments and
- ▶ the nature and degree of any significant risks of the treatment and alternative treatments.

The Treatment Plan should outline what treatment you are to receive and anything else the authorised psychiatrist thinks appropriate.

If you are on an RCTO it must also state

- ▶ who monitors and supervises your treatment and
- ▶ the name of your case manager and
- ▶ where you are to receive the treatment and
- ▶ what time you are required to attend for treatment and
- ▶ the intervals at which the monitoring doctor must submit a report to the Chief Psychiatrist.

You should ask the treating team to vary the Treatment Plan if you believe there are issues it should address. The Treatment Plan should be updated regularly by your treating team. It can only be changed by the authorised psychiatrist. Treatment plans must be reviewed by the authorised psychiatrist regularly.

You must have a copy of the Treatment Plan. If the plan changes you should have a copy of the changes.

If any of these things are not done the MHRB can order the doctor to revise the plan. They can also order revision if the service is not capable of implementing the plan. If you are not happy with your Treatment Plan you can appeal to the MHRB or ask the treating team to vary the Treatment Plan.

## **Confidentiality**

Your medical file and medical treatment is confidential. Information can only be given to other people in certain circumstances. For example; information about your medical condition and treatment can only be given to a relative or person if he or she is your primary carer and the information is reasonably required for your ongoing care. This information can be given even if you disagree.

The police cannot have access to your medical file. However, your file can be subpoenaed to court if your medical condition is relevant to your criminal case. A Magistrate or Judge will then decide if the police can have access to your file.

Your electronic records can only be shared amongst public mental health workers. Staff should only collect information that is relevant to them performing their duties.

Confidentiality can only be breached in very special circumstances. If you think that your confidentiality has been breached speak to a lawyer about what you can do.

## Access to Your Records— Freedom of Information

You can get access to the files about your mental health treatment, and your prison files. You can ask to look at the files or get photocopies. You do so by writing to the Freedom of Information Officer at the prison or hospital. Sometimes parts of the information will not be given to you if they fall under limited exemptions, but you do have appeal rights and you must be given everything else in the file. When you write asking for access, tell them you are on a low income, send a copy of your pension or health care card and ask for the fees to be waived.

## Leave of Absence

If you are on an RITO, an HSO, an HTO or an RHTO, you may be entitled to leave from the hospital for short periods of time to visit family and friends either for a few hours, overnight or a weekend. If you want leave you should speak to your doctor, psychiatrist or case manager. If you are on an RITO or HTO, leave is approved by the authorised psychiatrist at the hospital unit.

For RHTOs and HSOs, there are two kinds of leave; Special Leave of Absence and Leave of Absence. Special Leave of Absence is only given for specific purposes and cannot exceed 24 hours or 7 days if it is for medical treatment. It is granted by the Chief Psychiatrist. General leave of absence may be granted for any purpose, can last up to 6 months and can be extended for further 6 month periods. It is granted by the Secretary of the Department of Justice.

If you are refused Special Leave by the Chief Psychiatrist you can appeal to the MHRB. If you are refused leave of absence for any other purpose by the Secretary to the Department of Justice you do not have any appeal rights, but you could try asking again if you get more supporting material or things change.

## **Absconding or being absent without leave**

If you are a forensic patient or are on an RITO, HSO, HTO or RHTO and you leave the hospital without permission you can be apprehended by police or mental health service workers. If you are on an RITO or HTO and are absent for 12 months without being apprehended you are then discharged and are no longer an involuntary patient, unless the MHRB makes an order that you are not discharged.

## **Transfers**

If you are on mental health system orders your psychiatrist may want to transfer you to another mental health service. The Chief Psychiatrist can order you be transferred if it would be for your benefit or necessary for your treatment. If you do not want to be transferred you can appeal to the Board.

It may also be possible to be transferred interstate. Talk to a lawyer about this.

## **Social Security**

You may be entitled to the Disability Support Pension when you are in a mental health facility. You may not be considered to be in “gaol” under the Social Security Act. However, different rules apply to different situations depending upon your type of order and how you ended up in hospital. If you are on a mental health order and have a conviction you will not be eligible for Centrelink benefits but if you are in hospital and do not have a conviction you will be. You should talk to a lawyer about this.

## **Mail**

All people in hospital on mental health orders have the right to send and receive mail without it being opened. Security conditions can be imposed in relation to the mail of security patients. You could complain to the Chief Psychiatrist or Health Services Commissioner if you believe a security condition is unreasonable.

## Mental Health Review Board (MHRB)

The MHRB is an independent Board. Within 8 weeks of your being transferred to hospital from prison or put on an AO, DATO, RITO, HSO, HTO or RHTO and then every 12 months after that, the MHRB must review your case to decide whether you should still be in hospital or if your Treatment Plan should be revised (see page 63 for revision of Treatment Plans). If you are put on an RCTO you will only have an automatic review 12 months after the order is made. You will only be kept in hospital on the order (or on an RCTO) if the MHRB find all of the following apply to you:

- ▶ You appear to be mentally ill.
- ▶ The treatment you need can be obtained in a mental health service.
- ▶ Due to your mental illness, you need to be kept in the mental health service (or on an RCTO), for your health and safety (whether to prevent a deterioration in your physical or mental condition or otherwise) or for the protection of members of the public.

The Board will automatically review your case every 12 months while you are on a mental health system order.

If you are on any of these orders you can also appeal to the MHRB at any time to be taken off it. The MHRB will apply the same principles. You can ask a mental health or support worker, lawyer, family or friend to help you lodge an appeal, or contact the MHRB directly. Anyone with a genuine concern for an involuntary or security patient can lodge an appeal.

If the MHRB takes you off an HSO (see page 60), an HTO or an RHTO you go back to prison. If it takes you off an RITO you are released into the community. If it takes you off an RCTO, you are free to choose whether to receive treatment.

If you are on an RITO the MHRB can put you on an RCTO instead of discharging you completely. At an appeal or review hearing for an RCTO the MHRB can send you back to hospital on an RITO if it thinks that is necessary.

After your sentence ends you might be made an involuntary patient either on a CTO or in hospital. In either case, the MHRB reviews your status, and you can appeal at any time. You should get the booklet [Patients' Rights – A Self Help Guide to the Mental Health Act](#) from the Mental Health Legal Centre to find out about your rights of appeal and review.

The MHRB also hears your appeal if you object to being transferred to another mental health service and hears your appeal if the Chief Psychiatrist refuses to give you special leave as a security patient.

The flow chart on pages 70–71 sets out the role of the MHRB in relation to the different mental health system orders.

You have a right to legal representation at the hearing. You can take anyone you want to the hearing, if you think they will support your case. You can take letters or reports from other people or ask the MHRB to talk to people over the phone. You have the right to get access to all the documents the MHRB will have at least 24 hours before the hearing. This includes the file about your treatment. If the psychiatrist says you shouldn't see parts of the file, the MHRB will decide whether you can, and a lawyer can argue for you. After the hearing you can request a detailed Statement of Reasons for the decision if you write to the MHRB within 28 days of the hearing. You can appeal to the Victorian Civil and Administrative Tribunal within 28 days of the hearing or within 28 days of when you receive a Statement of Reasons if you request one. You can lodge an appeal and have another MHRB hearing at any time and ask for different members to sit.

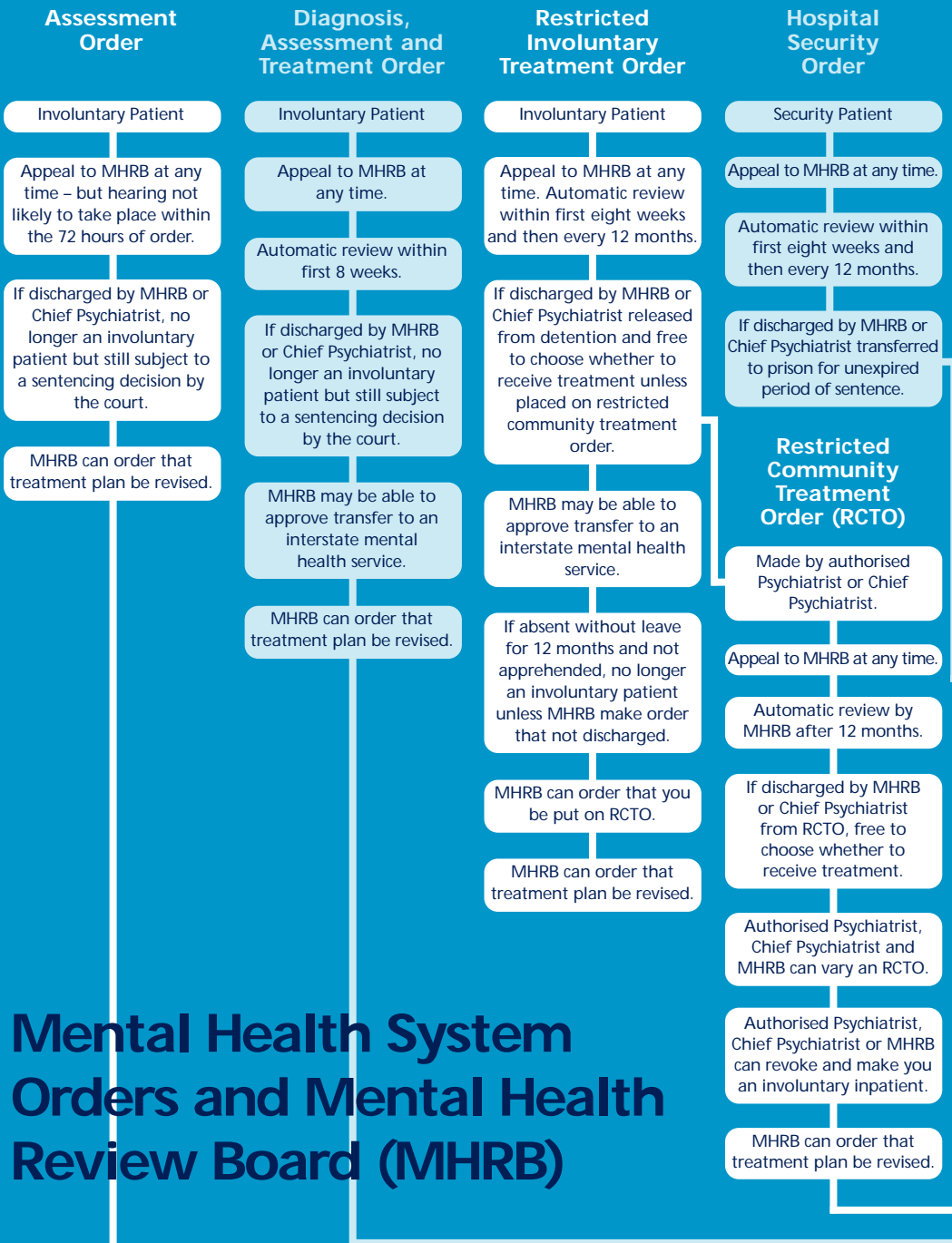
# 8 Appeals against Decisions of Courts

You have rights of appeal against all of the sorts of court orders discussed above.

If you disagree with a Magistrate's decision that you are guilty or you think that the penalty you have received is too harsh you can appeal to the County Court. You must do this within 28 days of the hearing.

If you are sentenced or placed on a mental health system order or Supervision Order in the County Court or Supreme Court you can also appeal. There are very strict time limits and very specific ways to appeal to higher Courts. Get legal advice immediately after your court appearance about how you can appeal.

# Mental Health System Orders Made By Court



## Mental Health System Orders and Mental Health Review Board (MHRB)

## Transfer From Prison To Hospital

## Civil Mental Health Orders

### Restricted Hospital Transfer Order

### Hospital Transfer Order

### Involuntary Patient In Hospital

### Involuntary Patient On Community Treatment Order



**Transfer to Another Mental Health Service in Victoria**  
 Security Patients and Involuntary Patients appeal to MHRB against transfer at any time.

# Useful contacts

## Obtaining legal assistance

### **Mental Health Legal Centre**

Level 4, 520 Collins Street  
Melbourne 3000

Email:

[mental\\_health\\_vic@clc.net.au](mailto:mental_health_vic@clc.net.au)

[www.communitylaw.org.au/  
mentalhealth](http://www.communitylaw.org.au/mentalhealth)

Ph: (03) 9629 4422  
1800 555 887

### **Federation of Community Legal Centres**

Suite 11, 1st Floor,  
54 Victoria Street  
Carlton 3053

Ph: (03) 9654 2204

[www.communitylaw.org.au](http://www.communitylaw.org.au)

This service will tell you where your closest community legal centre is situated and provides information on its website.

### **Victoria Legal Aid**

350 Queen Street  
Melbourne 3000

Ph: (03) 9269 0234 or  
1800 677 402

[www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

### **A duty lawyer at Court on the day of your case**

If you have not seen a lawyer before you get to court see the duty lawyer at the court and ask them to represent you.

This is a free service. Try and get there close to 9.00am so you can see the duty lawyer early.

### **A private lawyer through the Law Institute's referral service**

470 Bourke Street  
Melbourne 3000

Ph: (03) 9607 9550

[www.liv.asn.au](http://www.liv.asn.au)

[www.legalreferrals.liv.asn.au](http://www.legalreferrals.liv.asn.au)

You may find a lawyer that specialises in criminal law using the Law Institute's referral service or online directory. Lawyers participating in the 'Online Legal Referral Service' offer up to the first 30 minutes of the inquiry for free.

Ask them if Legal Aid will be able to pay for any further work, or how much any further work will cost you.

## Obtaining medical treatment while in custody

### Custodial Medicine Unit

Victoria Police Centre  
637 Flinders Street  
Melbourne 3005  
Ph: (03) 9247 6988

This unit can put you in touch with a nurse who may be able to help you with medicine or treatment you may need whilst in custody.

## Criminal Justice Diversion Program

### Melbourne Magistrates' Court

Ph: (03) 9628 7982

Ask if it could suit you. There are Diversion Co-ordinators at Ballarat, Bendigo, Broadmeadows, Dandenong, Frankston, Geelong, Heidelberg, Melbourne, Moe, Ringwood, Shepparton, Sunshine, Warrnambool and Werribee Magistrates' Courts, or just ask the registrar at other courts.

### Credit Bail Support Program

Level 4/233 William Street  
Melbourne 3000  
Ph: (03) 9628 7975

### Adult Parole Board

Quay West Precinct  
71 Moreland Street  
Footscray 3011  
Ph: (03) 927 57444

### Applications for leave for Forensic patients

Forensic Leave Panel  
17/50 Lonsdale Street  
Melbourne 3000  
Ph: 1800 222 987

### Appeals to the Mental Health Review Board (MHRB)

Level 30, 570 Bourke Street  
Melbourne 3000  
Ph: (03) 8601 5270  
Ph: 1800 242 703  
Fax: 86015299

[www.mhrb.vic.gov.au](http://www.mhrb.vic.gov.au)

### Appeals from the Mental Health Review Board to the Victorian Civil and Administrative Tribunal VCAT (General List)

7th Floor, 55 Kings Street  
Melbourne 3000  
Ph: (03) 9628 9755

[www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

### Making a complaint against a lawyer

Legal Services Commissioner  
Level 9, 330 Collins Street  
Ph: (03) 9642 0655  
Toll Free 1800 357 772

[www.lsc.vic.gov.au](http://www.lsc.vic.gov.au)

## **Making a complaint against the police**

### **Office of Police Integrity**

Level 3 South Tower  
459 Collins Street  
Melbourne 3000  
Ph: 8635 6188 or  
1800 818 387  
[www.opi.vic.gov.au](http://www.opi.vic.gov.au)

### **Ethical Standards Department (Police Conduct Unit)**

Level 2, Flinders Tower  
637 Flinders Street  
Melbourne 3005  
Ph: 1300 363101

**Complaints about the  
federal police**  
(Commonwealth) Ombudsman  
Level 10, 2 Lonsdale Street  
Melbourne 3000  
Ph: 1300 362072

## **Making a complaint against a psychiatric hospital, mental health service, psychiatrist or other mental health worker**

### **Office of the Health Services Commissioner**

Level 30, 570 Bourke Street  
Melbourne 3000  
Complaints line: Ph: 8601 5200  
1800 136 066  
Administration inquiries:  
Ph: (03) 8601 5222

### **Chief Psychiatrist**

Department of Human Services  
Level 17/50 Lonsdale Street  
Melbourne 3000  
Enquiries Line  
Ph: 1300 767 299  
Ph: 90967571

## **Support at Court**

### **Court Network**

Ph: 1800 681 614

**Asking Community Visitors to visit you in hospital**

Community Visitors Program  
5th Floor, 436 Lonsdale Street  
Melbourne 3000  
Ph: 9603 9500 or  
1300 309337

**Asking Prison Visitors to visit you in prison**

Official Prison Visitor Scheme  
Corrections Inspectorate  
Level 21, 121 Exhibition Street  
Melbourne 3000  
Ph: (03) 8684 1796

**Making an Inquiry about an Independent Third Person**

Office of the Public Advocate  
5th Floor, 436 Lonsdale Street  
Melbourne 3000  
Ph: (03) 9603 9500 or  
1300 309337



**your  
rights**

If you would like more copies of this booklet, contact  
Mental Health Legal Centre  
Level 4, 520 Collins Street, Melbourne 3000  
Ph: 9629 4422  
1800 555 887

You can also download this publication on  
[www.communitylaw.org.au/mentalhealth](http://www.communitylaw.org.au/mentalhealth)

## Mental Illness and the Criminal Justice System in Victoria

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