

# Road Map through the Criminal Justice System

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for People with  
Mental Health Symptoms  
in Massachusetts

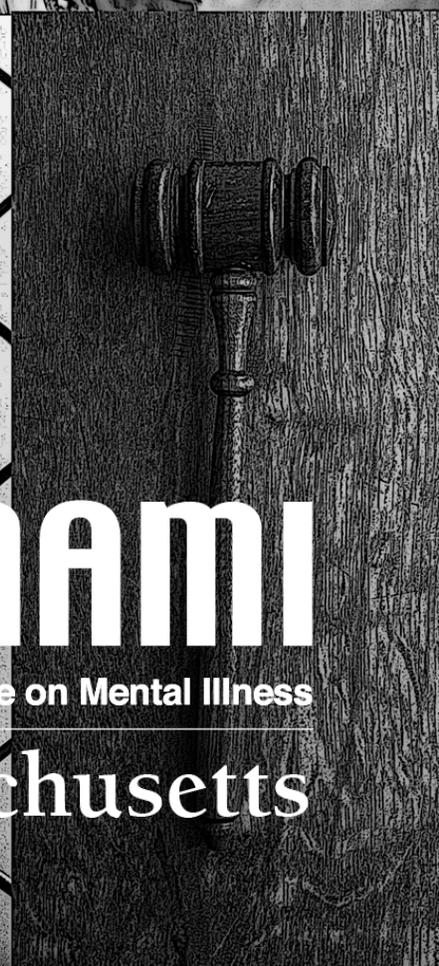


2020 update



NAMI  
National Alliance on Mental Illness

Massachusetts



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## Introduction

This guide is for people dealing with mental health symptoms, their families, and other supporters. Far too often mental health symptoms are interpreted as criminal behavior. The Road Map through the Criminal Justice System explains the essentials of the criminal justice system, to help you find a way out or to treatment within.

Please note that this information is provided for educational purposes only, and should not be considered legal advice. The information in this guide reflects laws and practices in Massachusetts only, at the time it was published.

## Avoiding the Criminal Justice System

### Finding Resources and Support

Access to treatment, peer support, and resources to meet basic needs - including food and housing - can help people dealing with mental health symptoms avoid the criminal justice system. The **COMPASS Helpline** at NAMI Massachusetts can help you find the resources you need. The Helpline is staffed by people with experience navigating the mental health system for themselves or a family member.

You can contact COMPASS about:

- finding peer and family support
- mental health or substance use treatment
- health insurance issues
- housing resources
- help with employment
- public benefits
- police and the legal system
- supports for children and teens
- other topics or situations

The COMPASS Helpline welcomes calls from people dealing with mental health symptoms, family members, friends, providers, educators, law enforcement, and others - anyone! Helpline

Navigators will ask you questions about the situation, help you identify concrete needs, and offer information, resources, ideas, and next steps to help you meet your needs.



### **COMPASS Helpline**

call 1-800-370-9085

email [compass@namimass.org](mailto:compass@namimass.org)

Monday - Friday • 9 am - 5 pm  
(excluding holidays)

**Learn more about the COMPASS  
Helpline at NAMI Massachusetts**

## Navigating a Mental Health Crisis

It can be frightening when you or a family member is experiencing a mental health crisis. You may not know what to do. Know that most mental health crisis situations can be resolved without law enforcement involvement.

You can find strategies and suggestions for navigating a mental health crisis that you or someone else is experiencing on the NAMI Massachusetts website.

If you feel like you need urgent help for a mental health crisis but there is no immediate danger, consider contacting your local Emergency Services Program (ESP).

**Navigating a Mental Health Crisis**  
Strategies and Suggestions  
from NAMI Massachusetts

**Find your local Emergency  
Services Program (ESP)**

ESPs are teams of trained mental health clinicians who can evaluate someone who is experiencing a mental health crisis and try to help them find the supports they need to manage the crisis. ESP services are available 24 hours a day, 7 days a week, 365 days a year.

If there is immediate danger and you do call 9-1-1, you can explain that you are calling because you or someone else is experiencing a mental health crisis. Be brief and specific about what is happening. Know that it is likely that both police and emergency medical services will arrive.

## Hospitalization for Mental Health or Substance Use

Chapter 123 of the Massachusetts General Laws controls the admission to a general or psychiatric hospital for mental health symptoms or substance use in Massachusetts. Your admission and discharge rights depend on your status: voluntary, conditional voluntary, or involuntary. If you are not sure what your status is, you can ask hospital staff.

### Voluntary Admission

#### **What is a voluntary admission?**

If you admit yourself into a hospital as a voluntary patient, your status is entirely voluntary and may be terminated by you or the hospital at any time. True voluntary admissions (as opposed to conditional voluntary admissions) are not usually offered in Massachusetts, but it can never hurt to request that status.

### What is a conditional voluntary admission?

If the hospital considers you competent to make the decision, you may apply for conditional voluntary admission status. As a conditional voluntary patient, you remain on this status until the hospital decides to discharge you, or you ask to leave by filing a "three day notice." After the three-day notice period ends, the hospital can decide to either discharge you or pursue commitment.

### What happens when you consider signing into a hospital as a conditional voluntary patient?

Before signing in as a conditional voluntary patient, you must be given the opportunity to consult with an attorney. You can contact the Committee for Public Counsel Services, Mental Health Legal Advisors Committee, or another lawyer of your choosing. You can also request to consult with the facility's Human Rights Officer during regular business hours.

A facility can accept an application for conditional voluntary admission only when you are assessed by the admitting or treating physician, and they determine that you understand the conditional voluntary admission process and want treatment.

### Are there advantages to conditional voluntary admission?

A conditional voluntary admission status prevents the facility from being able to pursue court-ordered commitment in most cases. The facility is also prevented from pursuing a district court order authorizing the administration of antipsychotic medication - what's called a **Rogers Order**.

A person on conditional voluntary status has the ability to sign a three-day notice of their intention to leave the facility. This notice forces the staff to act, either to allow the patient to leave or to petition for commitment.

### Are there disadvantages to conditional voluntary admission?

When you agree to conditional voluntary status, you waive the right to an attorney and the right to an emergency hearing under section 12 to have a judge determine whether your involuntary admission was an abuse or misuse of the section 12 process.

You also waiver the right to have a judge decide whether you meet the legal standard for involuntary commitment. However, this right is regained by signing a "three day notice."

**Mental Health Litigation  
Division at the Committee  
for Public Counsel Services**

617-988-8341

**Mental Health  
Legal Advisors Committee**

617-338-2345

## **What is a three-day notice?**

At any time during a conditional voluntary stay, you can submit a written notice to the hospital of your intent to leave. Hospitals usually have their own three-day notice form, but the notice does not need to be on any particular form so long as it is in writing.

During the 3 days, the hospital staff will assess your clinical progress and suitability for discharge. You cannot be held for longer than three business days unless the hospital petitions for your commitment prior to the end of the third day. You can withdraw the three-day notice at any time before action is taken on it.

## **Involuntary Admission under Section 12**

### **What is a Section 12?**

Section 12 controls involuntary treatment. Section 12(a) allows for an individual to be brought against their will to such a hospital for evaluation. Section 12(b) allows for an individual to be admitted to a psychiatric unit for up to three business days against the individual's will or without the individual's consent.

### **Who can sign a Section 12(a) application?**

A physician, psychiatric nurse, psychologist, licensed independent clinical social worker, or nurse practitioner, can apply to admit you to a hospital if they believe you meet the standard for admission after examination. In an emergency situation, a police officer may also apply for the hospitalization.

If an examination is not possible because of the emergency nature of the case and because of your refusal to consent to such examination, the physician, psychologist, psychiatric nurse, or licensed independent clinical social worker may apply for the hospitalization on the basis of the facts and circumstances.

### **What is the standard for an application for admission?**

The standard for an application for admission under Section 12(a) is whether failure to hospitalize you would create a "likelihood of serious harm by reason of mental illness." This means one of three things:

1. You pose a substantial risk of physical harm to yourself OR
2. You poses a substantial risk of physical harm to others OR
3. Your judgment is so affected that there is a very substantial risk that you cannot protect yourself from physical impairment or injury, and no reasonable community-based alternatives exist

## **What happens after admission?**

Following this procedure, you may be admitted to a psychiatric facility without a court hearing and against your will for up to 3 business days, provided that a physician designated by the hospital has examined you and signed the admission papers.

If the paper is signed by someone who does not qualify as a “designated physician” under Department of Mental Health (DMH) regulations, it is considered only an application for hospitalization. A designated physician at the facility must still actually examine you and determine whether you meet the standard for involuntary admission. The examination must occur within two hours of you arriving at the facility.

## **Can I have an attorney appointed?**

At the time of your admission, the hospital must inform you that it will notify the Committee for Public Counsel Services (CPCS) that you have been admitted, upon your request. CPCS, the state's public defender agency, will appoint an attorney to meet with you. You can also contact another attorney of your choosing.

## **Can the admission be reviewed?**

If you believe that your admission is the result of an abuse or misuse of the admissions process, you or your attorney can ask for an emergency hearing in district court. The hearing must be held no later than the next business day, unless you request a delay.

## **What can the hospital do during these first three days?**

At any time during these 3 business days, the hospital may discharge you if hospital staff determine that you are not in need of care and treatment or file a petition for involuntary commitment with the district court if they think you need further treatment.

## **What can I do during these first three days?**

At any time during the 3 days, you may apply to the hospital to change your status to that of a conditional voluntary patient. The hospital should accept the application if they believe you are competent to understand the conditional voluntary status and three-day notice provisions, want treatment, and the facility is suitable to provide treatment. You have a right to consult with an attorney before agreeing to conditional voluntary status.

## **Civil Commitment**

### **What is a civil commitment?**

If the hospital believes that you may need further treatment and observation, they may ask the court for permission to keep in the hospital against your will. This is called civil commitment. The standard for civil commitment is the same as application for admission under Section 12(a) , whether failure to further hospitalize you would create a "likelihood of serious harm by reason of mental illness."

### **What are my rights regarding civil commitment?**

If a hospital petitions the district court for involuntary commitment, you have certain rights:

- An attorney to represent you, at the state's expense if you cannot afford one
- To communicate with your attorney and to participate in case preparation
- Notice of the time and place of the court hearing, which must be held within five business days of the filing of the petition (unless you or your attorney requests a delay)
- An independent psychiatric examination, requested through your attorney
- A full adversarial hearing which you can attend, cross-examine witnesses through your attorney, and testify on your own behalf

### **Can the hospital decide not to go forward with a civil commitment hearing?**

Prior to the hearing, the hospital may withdraw the involuntary commitment petition if you agree to sign an application for conditional voluntary admission and the hospital accepts that application, or the hospital decides that you no longer need hospitalization and can safely be discharged.

### **How long is a civil commitment?**

The first commitment is valid for up to six months. Subsequent commitments are valid for up to 12 months. During the commitment, if the hospital determines that you no longer meet the standard of current "likelihood of serious harm" due to mental health symptoms it must discharge. Before the end of each commitment period, the hospital must file a new petition in order to continue holding you involuntarily.

### **Can I appeal my commitment?**

You can file an appeal to your commitment to the appellate division of the district court within 10 days of the decision. The appeal must claim that an error of law occurred regarding the prior hearing.

You or another person can also petition for discharge by applying in writing to a superior court. This application can be filed at any time and in any county, and must state that you are improperly or unnecessarily retained. You can ask the attorney who represented you during the commitment to file the paperwork on your behalf.

Within seven days of receiving the petition, the superior court must notify you, the hospital, and other interested people of the time and place of the hearing. The hearing must be held promptly before a superior court judge. The court will appoint a new attorney to represent you, if you cannot afford one. If the judge determines that you do not presently meet the commitment standard, you must be discharged. The burden of proof in these hearings is on the patient.

### **How else can I be discharged?**

The hospital must review your status at least once during the first three months of the commitment, once during the following three months, and at least annually after that. You will receive advanced notice of the review, and have a right to attend and participate. The hospital must consider possible alternatives to hospitalization and discharge you if you are found to no longer need hospitalization.

The hospital must also discharge you when they believe no longer needs inpatient care.

## **Medication Rights and Rogers Orders**

### **Do I have to take the medication the hospital gives me?**

In most circumstances, you have the right to refuse medication. This is true regardless of your admission status. You are presumed competent to make decisions regarding medication until you are found to be incompetent to do so in court (this is called a **Rogers Order**). The hospital may not deny you privileges because you refuse to take medication.

You may be medicated against your will in emergency situations only. A physician can authorize the use of medication as a chemical restraint in order to prevent violence against yourself or others. Your doctor can also administer a single treatment of medication without your consent to prevent irreversible medical damage. This treatment cannot continue without a judge's authorization.

### **What is A Rogers Order?**

A Rogers Order is a court order for extraordinary medical treatment. Rogers Orders is often used for the administration of antipsychotic medication. A Rogers Order can be sought in Probate Court for a person who is not involuntarily committed, and in District Court for a person who is already involuntarily committed.

The District Court orders are sometimes also referred to as 8B orders. The 8B treatment plan expires when the commitment period ends. An existing treatment plan may be modified by a petition seeking to amend the order.

## How does a District Court Rogers Order work?

A person committed involuntarily to a mental health facility under Section 12 has the right to make decisions about their treatment, including whether to take psychiatric medications, unless a court determines they are incompetent to make those decisions.

The process that determines competence begins when the head of the facility asks the district court where it is located to

1. determine whether you are competent to make treatment decisions, and
2. authorize treatment with antipsychotic medication.

Before a judge can order that you be medicated, the judge must:

1. Find that you are incompetent to make an informed decision about the treatment
2. Find that, if you were competent, you would agree to the treatment (this is called **substituted judgment**) and
3. Approve and authorize a written treatment plan.

## What is substituted judgement?

The judge must use substituted judgment - this means what the patient would do if they were competent. Factors to be considered in a substituted judgment decision include:

- any preference you expressed regarding the proposed or similar treatment, both currently and in the past
- your religious convictions or spiritual beliefs
- the impact that a medication order would have on your relationships with family
- prognosis with treatment and consequences if treatment refused
- side effects and alternative treatment options
- any other factors that you would be likely to take into account if you were competent to make the decision

## Involuntary Commitment Under Section 35

### What is a Section 35 order?

Massachusetts General Law Chapter 123, Section 35 is a law that allows a person to request a court order requiring someone to be civilly committed and treated involuntarily for an alcohol or substance use disorder. Only a "qualified petitioner" can request a Section 35 order.

### Who can request a Section 35 order?

- a spouse
- a blood relative
- a guardian
- a physician
- a police officer

Petitions for commitment under Section 35 may be filed in the District, Boston Municipal, or Juvenile Courts and are heard by judges during regular business hours.

### **What happens once a petition is filed with the court?**

The court will review the facts and decide whether to issue either a summons to appear or a warrant. If summonsed, you will receive an order to appear in court before a judge. If a warrant is issued, police officers will attempt to locate you, take you into custody, and deliver you to the court for a commitment hearing. The warrant is valid for up to five consecutive days, excluding weekends and holidays, or until you appear in court.

### **What happens during the hearing?**

At the court hearing, the court will order an examination. You have the right to refuse this examination. You have the right to be represented by an attorney in a section 35 hearing. If you cannot afford an attorney the court will appoint one. Your attorney may present independent expert testimony or testimony from family, friends, employers, and others.

The court will hear the testimony and evidence that relates to the case, and then decide if you meet the criteria for commitment. This includes:

1. You have an alcohol or substance use disorder, and
2. There is a likelihood of serious harm to you or others as a result of your substance use disorder

If both criteria are met, you will be involuntarily committed. If one/both criteria are not met, you will be released. A judge should order a commitment under Section 35 only when less restrictive alternatives are unavailable.

### **What happens if the court orders the commitment?**

If the judge orders the commitment, you will be returned to a holding cell to await transportation to a commitment facility. The evaluator will make a recommendation about what facility to send you to, based on individual need and bed availability.

Once you are admitted, the facility will complete an assessment to determine your needs. Services may include detoxification, Medication Assisted Treatment, individual and group therapy, and 12-step groups.

### **How long will the commitment last?**

Massachusetts law states that the commitment may be up to, but not exceed 90 days. The commitment may last less than the 90 days if you no longer meet the criteria for commitment, though you can choose to continue in the treatment program.

### **Can the petition be withdrawn?**

Once the petition has been filed, it cannot be withdrawn without the permission of the court. If the commitment has been granted, it must occur regardless of what facility is designated.

### **Can the judge order other treatment?**

Some people may require treatment that a civil commitment facility cannot provide. In such cases, the judge may order admission to a hospital-based program for people with complicated medical conditions or psychiatric hospital for people whose mental health symptoms require stabilization.

### **Can a Section 35 commitment be appealed?**

You can appeal the commitment to the Appellate Division of the court that ordered the commitment within 7 days. Upon request, the Appellate Division will expedite consideration of your appeal.

**Learn more about  
Section 35:**

[Section 35 in the Courts](#)

## **Entering the Criminal Justice System**

People enter the criminal justice system through different means, including encountering the police and being arrested, criminal complaints, and criminal indictments.

### **Encountering the Police**

#### **Should I call 9-1-1 when I am (or someone else is) experiencing a mental health crisis?**

It can be frightening when you or a family member is experiencing a mental health crisis. You may not know what to do. Know that most mental health crisis situations can be resolved without law enforcement involvement. You can find strategies and suggestions for navigating a mental health crisis that you or someone you support is experiencing on the NAMI Massachusetts website.

If you feel like you need urgent help for a mental health crisis but there is no immediate danger, consider contacting your local Emergency Services Program (ESP).

**Navigating a Mental Health Crisis**  
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Services Program (ESP)**

ESPs are teams of trained mental health clinicians who can evaluate someone who is experiencing a mental health crisis and try to help them find the supports they need to manage the crisis. ESP services are available 24 hours a day, 7 days a week, 365 days a year.

If there is immediate danger and you do call 9-1-1, you can explain that you are calling because you are or someone else is experiencing a mental health crisis. Be brief and specific about what is happening. Know that it is likely that both police and emergency medical services will arrive.

### **What happens when the police respond to a scene?**

Police may respond to the scene when someone has called 9-1-1 because of unusual or threatening behavior, or when they have encountered you while on patrol. When the police arrive, they are likely to ask questions about the situation, including whether you have firearms or other weapons.

This can be a scary situation. As much as possible, try to stay calm. Be respectful to the police officers and follow their directions, even if you disagree with what is happening.

### **Must the police arrest me?**

An arrest occurs when a police officer takes a person into custody for the purpose of charging that person with a crime. To make a lawful arrest, police officers must believe that you have committed a crime. This belief can be the result of observing a crime or through information provided by a reliable witness. You may be arrested for the following reasons:

- A criminal act is occurring/has occurred, and is considered to be an arrestable offense
- An outstanding warrant relating to an offense or violation of a judge's order
- A the failure to appear in court or to pay a fine

Depending on the nature of what has happened, the police may arrest you or may let you off with a warning. The police may also file a criminal complaint against you at a later time.

If your behavior meets the criteria for emergency mental health evaluation, police have the authority to transport you to a facility for that evaluation.

## **Booking Process & Interrogation by Police**

### **What is booking?**

When you are arrested, the police will usually bring you to the police station for booking. Booking is the process by which police collect information about an arrestee. When you are being booked:

- The crime for which you were arrested will be recorded
- Fingerprints will be taken
- A photograph (known as a mug shot) will be taken
- You will be searched
- Your personal property will be taken and held by police
- The police will check for any outstanding warrants
- You may receive health tests, mental health screening, and suicide screening

### further reading

[Criminal Law](#)

[Court Basics](#)

### What is police interrogation?

The police may ask you questions about what has happened. This is called interrogation. You have the right to have an attorney present when you speak to the police. If you are under arrest or otherwise not free to leave, the police must read your Miranda Rights.

Beware that a confession given during a police interrogation may be valid, even if you have a mental health diagnosis, if the confession is determined to be voluntary.

### Your Miranda Rights

- ▶ You have the right to remain silent.
- ▶ Anything you say can, and will, be used against you in a court of law.
- ▶ You have the right to an attorney.
- ▶ If you cannot afford one, one will be appointed to you.

### What happens after I am booked?

Once booking is complete, you will be brought to court for arraignment. If the court is closed, the police will contact a bail magistrate or bail commissioner. The bail magistrate or bail commissioner will review the facts of the case and decide if bail can be set, how much the bail will be, and any conditions for your release.

If you're released from police custody, you'll be given information about the charges against you and the date and time you must be in court. If you are not released by the bail magistrate or bail commissioner or cannot pay the bail, you'll be held in jail until your arraignment.

## Criminal Complaints and Indictments

### What is a felony?

Felonies are criminal offenses that are more serious in nature. In Massachusetts, felonies are offenses that are punishable by a period of incarceration in a state prison.

## **What is a misdemeanor?**

In Massachusetts, a misdemeanor is any criminal offense that does not carry the potential for state prison time. Misdemeanors can, however, carry a jail sentence - typically up to 1 year but a maximum of 2½ years.

**read more**  
[Felony and Misdemeanor Master Crime List](#)

## **What is a criminal complaint?**

A criminal complaint is a document that outlines the charges against you and why you are being charged. Criminal complaints are issued for misdemeanors and less serious felonies, and are resolved in District Courts. The criminal complaint will also include a summons, which is a notice that you need to appear in court for arraignment on a specific date and time, or a warrant for your arrest.

An application for a criminal complaint can be filed by the police or by the person who is the victim of the crime in District Court. A magistrate will review the application to decide if probable cause exists, meaning there is reasonable cause to believe that you committed the crime. If the crime was witnessed by a police officer who writes the application, the criminal complaint will generally be issued without a hearing. If a police officer does not witness the crime, a show cause hearing can be requested in some cases.

## **What is a show cause hearing?**

If you are accused of committing a misdemeanor crime and you are not arrested, you are entitled to a show cause hearing. This hearing is held before a magistrate in District Court to determine if there is probable cause to believe you committed the crime.

If you are required to attend a show cause hearing, you will receive a notice in the mail with the hearing time, date, and location. You have a right to be represented by an attorney during the hearing, to present evidence, and bring witnesses. You will not be appointed an attorney for the show cause hearing.

If the clerk magistrate believes that probable cause exists, a criminal complaint will be issued with either a summons to return to court or warrant for your arrest. If the clerk magistrate believes that there is no probable cause, the complaint will be dismissed. The clerk may also decide to hold the application for a criminal complaint open for up to a year.

## **What is a grand jury indictment?**

For more serious charges, grand jury indictments take the place of criminal complaints. A grand jury is a group of private citizens who are assembled for a specific term to review all cases that the prosecution intends to bring.

The grand jury will review evidence presented by the prosecutor, and determine whether there is probable cause to believe that you committed the crime. If the grand jury decides there is probable cause, they issue an indictment. Grand jury indictments are resolved in Superior Courts.

## Court System in Massachusetts

### What is a Trial Court?

The trial courts form the largest part of the court system. When cases are started in Massachusetts's courts, they are brought to the trial court. The trial court is subdivided into 7 departments, which are each designed to handle particular kinds of cases, although many of these courts share jurisdiction with the other trial courts.

The criminal cases are most likely to be resolved in the Boston Municipal, District, or Superior Courts.

#### Trial Courts in Massachusetts

- Boston Municipal Court
- District Court
- Housing Court
- Juvenile Court
- Land Court
- Probate and Family Court
- Superior Court

### What is the District Court?

The District Court hears a wide range of criminal, civil, housing, juvenile, mental health, and other types of cases. District Court criminal jurisdiction extends to all felonies punishable by a sentence up to five years, other specific felonies with greater potential penalties, all misdemeanors, and all violations of city and town ordinances and by-laws.

A District Court cannot impose a sentence of more than 2½ years in a house of correction and may not sentence someone to state prison. In felonies not within District Court final jurisdiction, the District Court conducts probable cause hearings to determine if a defendant should be bound over to the Superior Court.

District Court magistrates conduct hearings to issue criminal complaints and arrest warrants, and to determine whether there is probable cause to detain persons arrested without a warrant. Both judges and magistrates issue criminal and administrative search warrants.

**read more**

[Offenses Within District Court Criminal Jurisdiction](#)

### What is the Superior Court?

The Superior Court has exclusive original jurisdiction in first-degree murder cases and original jurisdiction for all other crimes. It has jurisdiction over all felony matters, although

it shares jurisdiction over crimes where other Trial Court Departments have concurrent jurisdiction. Finally, the Superior Court has appellate jurisdiction over certain administrative proceedings, as well as bail appeals.

### **What is the Boston Municipal Court?**

The Boston Municipal Court Department jurisdiction includes most criminal offenses which do not require the imposition of a state prison sentence. If a prison sentence is mandated, the Court may conduct probable cause hearings to determine whether offenses will be bound over to the Superior Court. The Court has original jurisdiction over a number of serious felonies, concurrent with the Superior Court.

## **Arraignment and Bail**

### **What is an arraignment?**

The first time you are taken in front of a judge after you are arrested or after a criminal complaint or indictment has been issued is called an arraignment. It typically happens within 24 hours of the arrest.

### **What happens before the arraignment?**

Before your arraignment, you will meet with a probation officer. The probation officer will gather information about:

- your identity
- your past criminal record
- your eligibility for a court-appointed attorney
- other factors that can help determine if bail should be set

### **What happens at the arraignment?**

At the arraignment:

- The charges being brought against you will be read
- You will be asked to enter a plea
- You will be appointed an attorney, if you cannot afford one
- A date will be set for a pre-trial conference

A bail hearing or dangerousness hearing may also happen during the arraignment. Motions or orders for competency evaluations, or pretrial diversion may also occur.

## **What pleas can be entered?**

During the initial court appearance or an arraignment, you will be asked to enter a plea to the crime for which you are charged.

- A **guilty plea** means that you admit to all crimes charged
- A **not guilty plea** means you do not admit to the actions charged. Although you are not necessarily denying the charges, you are holding the Commonwealth of Massachusetts to its burden of proof
- A **nolo contendere plea** means that, while not admitting guilt, you do not dispute the charge

## **What determinations are made at an arraignment?**

At the initial appearance or arraignment, a judge will determine if you should be:

- Released on bail, or should have the amount of your bail raised or lowered
- Released on personal recognizance
- Released with conditions imposed
- Remanded or held in jail without bail

## **What is a dangerousness hearing?**

If the prosecutor believes that you may pose a danger if you are released pending trial, they can request a dangerousness hearing. Dangerousness hearings can only be requested in cases involving certain felony charges.

If a dangerousness hearing is requested, it must be held within 7 days of the arraignment. At the hearing, the judge will listen to testimony and decide if you are too dangerous to be released. If the judge agrees, you will be held awaiting trial for not more than 120 days by the district court or not more than 180 days by the superior court.

## **What is bail?**

Bail is money paid to the court as a guarantee that you will return for future court dates, if released from custody. Bail is set by either a bail magistrate or bail commissioner while you are in jail prior to the arraignment, or by a judge at the arraignment.

## **What happens at the bail hearing?**

At the bail hearing, a judicial officer reviews the case and determines if bail should be set. If your bail was set by a bail magistrate or bail commissioner, the judge can elect to adopt that amount or order a higher or lower amount at a bail hearing.

## How can bail be posted?

You or anyone over the age of 18, can post the bail. Bail can be paid at the police department where you are being held, or at the court clerk's office. You will be released after payment and are required to appear at the arraignment. The person posting bail assumes responsibility for your appearance in court.

## What if bail is set and cannot be afforded?

If bail is set and you cannot afford to post it to the court, you will be transported to the local detention center and then to the appropriate courthouse on the specified trial date. A bail review hearing may also be requested.

## Legal Representation

## What does it mean to have counsel appointed?

If you cannot afford an attorney, the court will appoint an attorney to represent you from the Committee for Public Services, the state's Public Defender's office. If you are appointed an attorney, you will typically talk to them for the first time at your arraignment.

If you are facing only misdemeanor charges that will not result in any jail time, you may not be eligible for a public defender. These appointments will only be guaranteed cases where a prison sentence is likely.

## What if I can afford an attorney or am not eligible to receive an appointed attorney?

If possible, try to find an attorney who has experience representing people who have a mental health diagnosis. Before hiring an attorney, you should always meet them and interview him/her. Questions to ask yourself before hiring the attorney:

- Is the lawyer experienced?
- Do I feel comfortable with the lawyer?
- Does the lawyer seem interested in my case?
- Is the lawyer friendly and easy to communicate with?
- Does the lawyer have any background in cases involving people with mental health diagnoses?

## factors that are considered when setting bail

- Risk for violence
- Risk for escape
- Likelihood to appear in court
- Residency
- Employment status
- Previous arrest record
- Severity of the charge
- Stability in the community
- Potential public safety risks

## further reading and resources

[The Bail Process](#)

[Massachusetts Bail Fund](#)

When you meet with the attorney, discuss costs and ask for a written fee agreement. You should also ask the attorney to explain his/her ethical obligations and the attorney/client relationship. Regardless of who is paying the attorney's fees, the attorney's ethical obligations are to the person they are representing in the criminal proceeding.

You may find it helpful to provide information about your mental health diagnosis to your attorney, including:

- Psychiatric and other health diagnoses, hospitalizations, past and current psychiatric medication and treatment, and contact information for providers
- List of any stressors at the time of the offense
- Any criminal history or other legal problems
- Education, job history, and community supports and resources you have access to (faith community, social services, family and friends, etc.)

#### **resources for attorney referrals**

[Mental Health Legal  
Advisors Committee](#)

[Massachusetts Bar Association  
Lawyer Referral Service](#)

[Massachusetts Association of  
Criminal Defense Lawyers](#)

#### **What is the prosecution's role?**

The prosecutor represents the state, and works for the local district attorney's office. It is their job to prove any charges against you by gathering evidence and presenting it in court. The prosecutor also has the authority to drop or reduce charges and make plea bargains.

## Pre-Trial and Trial

### Pre-Trial Conferences and Hearings

#### **What is a Pre-Trial Conference?**

The pre-trial conference is usually the next time you must appear at court. This is an informal meeting between your attorney and the prosecutor where they discuss the case, and either try to resolve it or discuss how the trial may proceed.

#### **What is a Pre-Trial Hearing?**

One or more pre-trial hearings may also occur. During a pre-trial hearing, your attorney and the prosecutor will update the judge on the status of the case. Additional pre-trial hearings may be scheduled at this time, or a trial date may be set.

### **What is pretrial release?**

There are a variety of pretrial release options that are available to the court. This includes deferring prosecution, plea bargains, pretrial probation, and continuance without a finding. The case can also be dismissed.

### **What happens when a case is dismissed?**

The prosecutor may decide not to move forward with the charges. If this happens, the judge will dismiss the case and you will be released unless the prosecutor asks for more time to do additional investigation. While the initial case may be dismissed, new charges may be filed if new evidence is discovered.

The judge also has the authority to dismiss a case. This decision may be based on the actions of members of the police or prosecutor or the lack of a substantial case against you.

### **What is deferring prosecution?**

The prosecutor may offer, and the judge may approve, a deferred prosecution of the charges if you agree to participate in a treatment program for a specified period of time and to successfully complete all program requirements. Upon successful completion of the treatment program, charges may be dropped or reduced.

### **What is a plea bargain?**

Prosecutors and defense attorneys often negotiate deals known as plea bargains. The prosecutor may offer to ask the judge for a reduced sentence if you plead guilty, for example, or a specific probationary or final sentence may be negotiated.

Your defense attorney has the obligation to describe all of the pros and cons of any plea bargain offer with you. The judge must approve all plea bargains and makes the final decision about sentencing.

### **What is pretrial probation?**

Generally with pre-trial probation, you have been arraigned on the criminal charges and agree to abide by certain conditions of release while the case is pending. These conditions may include staying away from or paying restitution to an alleged victim, performing community service hours, or attending a court-ordered educational class. If after a designated period of time (usually 3- 6 months) and before the case is brought to trial, you abide by all conditions of release, the judge will dismiss your case.

Violating the conditions of pre-trial probation will cause the case to be brought back before the court and put on the trial list for full prosecution.

### **What is Continuance Without a Finding (CWOFF)?**

Continuance Without a Finding (CWOFF) is an admission of guilt or an "admission to facts sufficient for a finding of guilt." Through this plea, you admit to sufficient facts and, in return, the court makes a determination that there is sufficient evidence to support a guilty finding but it does not officially enter a finding of guilty. Instead, the court continues the case "without a finding" for a set period of time. During this time, you are formally placed on probation. If you satisfy the conditions of probation, the case is dismissed by the court without a conviction

### **Are there any consequences to these pre-trial options?**

Each of these possible resolutions to a criminal case may have different consequences, including your ability to find a job, be eligible for subsidized housing, or stay in the country if you are an immigrant. These are sometimes referred to as "collateral consequences" and can come about automatically or anytime a check of the Criminal Offender Record Information (CORI) system is triggered. Your defense attorney should fully inform you about these consequences.

## **Court Based Jail Diversion Initiatives in Massachusetts**

### **What is a specialty court?**

Specialty Courts are problem-solving court sessions that provide court-supervised probation and mandated treatment in lieu of incarceration. There are different types of speciality court sessions, each with a different focus.

Ask your attorney if you would like to find out more about a speciality court session and know if you are eligible to participate.

### **Specialty Courts in Massachusetts**

Mental Health Courts

Drug Courts

Veterans Treatment Courts

Homeless Courts

[learn more about Specialty Courts](#)

### **What is a mental health court?**

Mental health court sessions provide an alternative to incarceration through case management and by linking to community-based services with probation for people diagnosed with mental health conditions. As of 2020, there are 7 mental health court sessions in Massachusetts.

Participation in the mental health court is for people placed on pre-trial probation or post-disposition probation. As part of the session, you must participate in community-based treatment for a minimum of three months, along with regular reviews by the specialty court team. The treatment team creates a service plan that includes referrals to mental health and substance use treatment, as well as housing, education, and employment opportunities.

### **What is a drug court?**

Drug court sessions provide intensive, supervised probation and mandatory treatment, as well as random drug testing with progress monitored by a supervising probation officer. As of 2020, there are 25 drug court sessions and 1 Family Drug Court session in Massachusetts.

The court works with treatment providers, which provide clinical assessments, develop and monitor treatment placements, and identify ancillary counseling, case management and outreach services.

### **What is a veteran's treatment court?**

Veterans' treatment courts are designed to handle criminal cases involving people who have a history of military service through a coordinated effort among the veterans services delivery system, community-based providers, and the court. The sessions aim to improve public safety while dealing with the underlying issues of posttraumatic stress disorder, traumatic brain injury, and military sexual trauma. As of 2020, there are 5 veteran's treatment court sessions in Massachusetts.

### **What is a homeless court?**

The homeless court program seeks to expand access to the criminal justice system and reduce legal barriers faced by people who are homeless. The purpose of the program is to assist people who are homeless or at risk of being homeless secure permanent housing, employment, and government benefits. Upon completion of the program, participant's cases are dismissed or terminated. As of 2020, there are 2 homeless court court sessions in Massachusetts.

### **Are there other diversion programs that I can participate in?**

The Criminal Justice Reform Act of 2018 has incentivized the creation of additional jail diversion programs within local district attorney offices for people with mental health diagnosis, people using substances, and current or former members of the military. Ask your attorney if there is a diversion program that you can access.

**read more**  
[Directory of  
District Attorney Offices](#)

## **What are court clinic services?**

Court clinics provide forensic mental health services to the District and Superior Court Departments of the Massachusetts Trial Court. This includes a range of evaluation, referral, and consultation services. Court clinicians often evaluate court-referred cases and identify appropriate treatment services, which can serve to divert them from the criminal justice system. Keep in mind, however, that any information you provide to the court clinician will not be covered by the usual privilege and confidentiality. The court clinician should explain these limits of confidentiality.

## **Mental Health Issues That Can Arise Before or at Trial**

### **What is the Humane Practice Rule?**

Information that is obtained by police, even if obtained before a formal arrest is made, may be used against you. The Humane Practice Rule, however, dictates that such statements may be suppressed if your mental health symptoms impacted your ability to make the statements voluntarily.

The Humane Practice Rule requires that when a defendant's confession or admission is offered in evidence, the judge must initially decide whether the Commonwealth has proved beyond a reasonable doubt that the statement was voluntary. This occurs at a preliminary hearing, in the absence of the jury.

If the judge rules that the confession or admission was involuntary, it must be excluded. If the statement is admitted, the judge must then resubmit the issue of voluntariness to the jury by instructing that each juror is not to consider the statement unless, on all the evidence in the case, that juror is satisfied beyond a reasonable doubt that your statement was a free and voluntary act. The jury should not be told of the judge's preliminary determination of voluntariness.

### **What is competency and why is it important?**

Competency means that you have the ability to understand the proceedings against you and can assist in your own defense. The issue of competency focuses on your mental state at the time of trial, not your mental state at the time of the acts leading to the criminal charge.

Understanding competency is important because no person can be tried or sentenced for a crime if, because of mental health symptoms, they cannot understand the nature of the proceedings or assist his lawyer in preparing their defense. You are entitled to a hearing on your competence to stand trial if substantial doubt exists about your competency.

The judge at a criminal trial has an obligation to raise the issue of your competence to stand trial if you exhibit behavior in the courtroom that may indicate that you are not competent.

Competency issues can also be raised by the prosecutor or your defense attorney. This can occur at bail review, at trial, or any time in between.

### **What is a court ordered evaluation for competency?**

As a result of the competency hearing, the judge may order you to be evaluated for competency. The competency evaluation is a formal review of your ability to understand the court process, the offense being charged, the possible penalty, and the possible dispositions, as well as your ability to assist defense counsel.

An initial competency evaluation usually occurs at the courthouse or where you are incarcerated. After the initial evaluation, the judge may order further evaluation at either a state mental health facility or Bridgewater State Hospital. The competency evaluation period will last 20 days, but may be extended for another 20 days. At the end of the evaluation, a report of findings will be issued.

During this evaluation period, the facility may petition the court to commit you for up to 6 months. If a petition is filed, you will be automatically appointed an attorney from the Mental Health Litigation Division at the Committee for Public Counsel Services, the state's public defender agency.

### **What happens after the competency evaluation?**

If you are found competent to stand trial, the criminal process will continue as usual. You can request to remain in the facility while the trial continues.

If you are found incompetent to stand trial, you may be committed to a mental health treatment facility until you have regained competence. Alternatively, but less frequently, you may remain in the community pending restoration to competency. The trial will be stayed until you become competent to stand trial, unless the case is dismissed.

### **What is a lack of criminal responsibility defense?**

A "lack of criminal responsibility" defense is a claim that, because of your mental health symptoms, you were unable to realize that your behavior was wrong or were unable to make yourself behave as the law requires at the time of the crime. This is colloquially known as the "insanity defense."

Although a criminal responsibility evaluation may be requested by your defense attorney early in the proceedings, you must be competent to stand trial in order to actually use a lack of criminal responsibility defense. This defense cannot be asserted without your agreement.

### **What is a court ordered evaluation for lack of criminal responsibility?**

An evaluation for lack of criminal responsibility must be requested by the defense attorney

at a formal hearing before a judge. The evaluation addresses whether, at the time of the crime, you were unable to either make yourself behave as the law requires or were unable to realize that your behavior was wrong because of your mental health condition.

The evaluation may occur where you are incarcerated, or you may be sent to a state mental health facility or Bridgewater State Hospital for evaluation. The evaluation period will last 20 days, but may be extended for another 20 days. At the end of the evaluation, a report of findings will be issued.

### **What could happen if I am found not guilty by reason of lack of criminal responsibility?**

Since this finding is a type of acquittal, you may be released directly from court. More frequently, a judge may order that you be hospitalized for an initial 40-day observation period - either at a mental health facility or Bridgewater State Hospital .

If it is shown that your discharge would create a likelihood of serious harm to yourself or to others, a judge will grant the petition and order you committed for up to 6 months. After that, a judge will review your condition at least once a year, and there may be additional periods of commitment if you continue to be a danger to yourself or others. If you are found to be no longer dangerous, you will be discharged.

### **What is Bridgewater State Hospital?**

Bridgewater State Hospital (BSH) is a correctional facility for men. It is operated by the state Department of Correction, although a private company oversees day-to-day operations and clinical and support personnel staff the facility. Men housed at BHS are under civil commitment, or are being evaluated for competency or criminal responsibility. People should be transferred to BHS only when other less restrictive options are not possible.

BHS is part of the Bridgewater Correctional Complex. It shares grounds with Old Colony Correctional Center, a facility for men that focuses on mental health, and the Massachusetts Treatment Center, a facility for prisoners identified as sex offenders and men who have been civilly committed as sexually dangerous persons.

## **Going to Trial**

### **What is a trial?**

A trial is an adversarial process during which the prosecution and the defense get to tell their side of the events leading to the criminal charges. You will make the decision, with your attorney, about how to proceed with the case, whether to bring up mental health issues at trial, and whether treatment should be part of any plea bargain or other disposition. The prosecutor must prove the individual's guilt beyond a reasonable doubt.

The trial usually must happen within 12 months of the “return date,” which is generally the arraignment date. This time limit may be extended, however, due to continuances and for other reasons.

### **Jury Trial or Bench Trial?**

If you are charged with a crime that has a possible penalty of 90 days or more, you are entitled to a jury trial. This is a trial where the jury decides if you are guilty. You can waive your right to a jury trial and instead have a bench trial. This is where the judge makes the decision. You should discuss these options with your defense attorney. The request for a jury trial must be filed at least fifteen days before the scheduled trial date.

### **What is a verdict?**

A verdict is the final decision by the jury or judge. When you are accused of a crime, you are considered innocent until you either plead guilty or are found guilty at trial. A finding of guilty means that the judge or jury was convinced that you were guilty beyond a reasonable doubt. If you are found not guilty, this is called an acquittal. If you are acquitted, you cannot be tried again for the same crime.

## Post Trial

### New Trial or Appeal

#### **What is a motion for a new trial?**

If after consulting with your defense attorney, you do not agree with the verdict or the sentence imposed and there is a legal basis for doing so, a motion for a new trial can be filed. Motions for a new trial are granted infrequently. If a motion for a new trial is denied, an appeal can be filed with an appellate court.

#### **What is an appeal and what could happen?**

An appeal is the review of a trial court judge's decisions by a higher court. If your appeal is successful, the appellate court may reverse the conviction and order a new trial, send the case back to the trial court for a hearing, or dismiss the charges.

#### **Where will the appeal be heard?**

If the original trial was in District Court, the appeal will likely be heard in the Massachusetts

Appeals Court. Certain types of appeals are heard instead by the Supreme Judicial Court, which is the highest Court in the Commonwealth of Massachusetts. For example, an appeal from a conviction of first-degree murder goes directly to the Supreme Judicial Court. The Supreme Judicial Court can also elect to bypass review by the Appeals Court and hear a case on direct appellate review.

## Sentencing

### How will I be sentenced?

If you are found guilty of the charged crime at trial, the judge will impose a sentence keeping the Massachusetts Sentencing Guidelines in mind. The judge may impose a sentence that includes:

- A jail or prison term
- Conditional discharge
- Fines or restitution to the victim
- Community service
- Probation

### factors that may be considered when you are sentenced

- Your criminal history
- Severity of the crime
- Pre-sentence investigation report
- Mitigating and aggravating factors
- Victim impact statements

**read more**

[Massachusetts Sentencing Guidelines](#)

### What is a pre-sentence evaluation?

A pre-sentence evaluation can be ordered by the judge after a conviction to identify any mental health issues prior to sentencing. Information learned through the evaluation can help the judge create an appropriate sentence, possibly including treatment.

### What is a pre-sentence report and how is it used?

A pre-sentence report is a background investigation, conducted upon request by the court after a person has been convicted but before they have been sentenced. The report contains information about your prior criminal history (if any), background and community supports, and the circumstances of surrounding the crime. It is used by the sentencing judge to determine the individual's risk to the community and the proper sentence to impose.

### What are mitigating and aggravating circumstances?

Mitigating and aggravating circumstances are facts about you or the crime that help explain your culpability, or responsibility, for the crime. Mitigating circumstances are factors that can be used to argue for a lesser sentence. This may include your age at the time of the offense, your role in the crime, or your disability status.

Aggravating circumstances are factors that can lead to a harsher sentence. This may include the victim's age or disability status, your role in the crime, and your prior criminal history.

### **Can the sentence be reviewed?**

You can request to "revise and revoke" your sentence by filing a motion with the court within 60 days of when the judge decides the sentence or final appeals have been heard. A hearing will be held before a judge, and the judge will decide if the sentence is just or should be changed.

## **Post-Conviction & Incarceration**

### **Jails in Massachusetts**

#### **How are jails in Massachusetts organized?**

In Massachusetts, jails - usually called houses of correction - are run by county Sheriffs Departments. Jails typically house people serving sentences of up to 2½ years. Jails can also hold people pending arraignment, conviction, or sentencing, people who have violated probation or parole, and people who are waiting to be transferred to other facilities. Jails also house incarcerated people for other facilities due to overcrowding.

**read more**

[Directory of Sheriffs' Departments](#)

Some local police departments also operate city jails. City jails typically house people for short periods of time while they await processing, release on bail, or transfer to a house of correction.

#### **What mental health services are offered in Massachusetts' jails?**

Although mental health services are provided to people detained or housed in each house of correction, the type of services can vary. All county facilities accredited by the National Commission on Correctional Healthcare must provide mental health screening and triage, a suicide prevention program and provisions for medication administration and hospital transfers.

#### **What if I am being denied mental health care while in jail?**

If you are incarcerated in a jail and being denied mental health care, you can contact the

Mental Health Legal Advisors Committee or Prisoners' Legal Services for support. Either organization can inform you of your rights, tell you about any grievance processes that you can access, and may be able to provide representation in limited circumstances.

## Prisons in Massachusetts

### How are prisons in Massachusetts organized?

Prison house people who have been convicted of felonies serving longer than 1-year time. The Department of Correction (DOC) is responsible for operating the Massachusetts prison system and its 16 facilities.

The DOC operates prison facilities at 4 security levels: maximum, medium, minimum, and pre-release. Privileges and programming for prisoners vary at each level.

Prisoner security classifications help dictate what type of facility a person will be housed in and what privileges they will have. Security classifications as set when prisoners first enter the DOC, and are reevaluated at least once a year thereafter.

### What mental health services are offered in Massachusetts' prisons?

Assessment and screening of prisoners begins during the initial receiving and booking procedure. This will include a physical assessment, dental screening, and mental health evaluation performed by a nurse within 14 days of admission. Based on the initial evaluation, an individualized treatment plan may be created for you.

## legal resources for prisoners

### **Mental Health Legal Advisors Committee**

Denials of mental health care and restraint or seclusion in jails/houses of corrections or and at Bridgewater State Hospital

- 617-338-2345 if you are not incarcerated
- 617-227-6500 if you are incarcerated

### **Prisoners' Legal Services**

Denials of medical or mental health care and other prisoner rights issues in jails/houses of corrections and prisons

- 1-800-882-1413 if you are not incarcerated
- 617-482-4124 collect if you are in a jail/HOC
- 9004 if you are in a DOC facility

### **Northeastern University**

#### **Prisoners Assistance Project**

Prisoner rights issues

- 617-373-3628

### **Harvard Prison Legal Assistance Project**

Prisoner rights issues

- 617-495-3127 collect if you are incarcerated

## read more

[Department of Correction Directory](#)

[Department of Correction Inmate Programming](#)

[Inmate Security Classification](#)

[Prison Security Levels](#)

## **What if I am being denied mental health care while in prison?**

You can contact Prisoners' Legal Services for support if you are incarcerated in a prison and being denied mental health care. They can inform you of your rights and grievance processes that you can access, and may be able to provide representation in limited circumstances.

### Mental Health Crisis while Incarcerated

## **What happens if I have a mental health crisis - or the facility believes I am having a crisis - while I am incarcerated?**

The person in charge of the correctional facility where you are housed may have you evaluated, if they believe you need to be hospitalized because of mental health symptoms. This evaluation may occur at the facility where you are housed or another facility. After the evaluation, a commitment hearing will occur and a judge will decide if you are in need of hospitalization. You have the right to be represented by an attorney at the hearing.

## Preparing for Release

### Reintegration Planning

## **What type of reintegration planning is available for people in county houses of correction?**

All houses of correction provide reintegration support for prisoners to help them transition back to the community.

## **What type of reintegration planning is available for people in state prison facilities?**

The Department of Correction (DOC) is responsible for providing reintegration support to all prisoners, to help ensure a successful transition back into the community. DOC creates an Individual Reentry Plan for each prisoner. The plan includes post-release housing, health insurance, employment opportunities, community resources, and physical or mental health services. Some DOC facilities also offer specialized reintegration supports.

## **What are Regional Reentry Centers (RRC)?**

Regional Reentry Centers (RRC) help people released from a state correctional facility make the transition from incarceration to the community. RCCs help people connect with community benefits and

**read more**

[Department of Corrections  
Reentry Planning](#)

resources, get needed personal documents, find work, and more.

### **What is the Forensic Transition Team?**

The Department of Mental Health Forensic Transition Team (FTT) helps to improve the quality of life for adults with mental health diagnoses who become incarcerated or detained in correctional settings.

FTT staff is available to all correctional facilities, including people in state prisons and county houses of correction, to assist in reentry planning for people who are eligible to receive DMH services. FTT staff often also provide informal information and referrals for people who are not eligible for DMH services who may be seeking mental health services upon release.

### **What is the Behavioral Health Justice Involved Program?**

The Behavioral Health Justice Involved Program is a pilot program designed to provide support to adults with behavioral health diagnoses who are involved with the criminal justice system. The program provides care management and reentry navigation services for eligible to help participants successfully transition to the community. This program is currently available in Middlesex and Worcester counties. People can be referred by the Sheriff's Department, DOC, or community correction staff or can self-refer to the program.

Eligibility includes:

- MassHealth eligibility
- Living in or releasing to Middlesex or Worcester Counties
- Diagnosis of mental health or substance use disorder
- At risk for admission to a 24-hour treatment facility
- Currently detained or incarcerated and expected to be released within 60 days OR or receiving parole or probation supervision in the community

#### **additional resources**

[Parole, Probation & Post-Conviction](#)

[Coming Home Directory](#)

[Coming Home Worcester](#)

#### **more information**

##### **Open Sky Community Services**

central and southern

Worcester county

774-232-0640

##### **Advocates, Inc.**

northern and eastern Worcester  
county and Middlesex county

508-630-4148

## Glossary of Terms

**Acquittal** - The finding of a judge that the evidence is insufficient to support a conviction, or a verdict that the accused is not guilty.

**Adjudication** - A judgment or decision of a court or jury regarding a case.

**Appeal** - A request to a higher court for review of a decision or ruling of a lower court.

**Appearance** - A coming into the court in person or by filing a paper, as plaintiff, defendant, or legal representative.

**Appellate Court** - A court having jurisdiction to review the judgment or order of a lower court.

**Arraignment** - The procedure whereby an accused is brought before a court to plead to the criminal charge in an indictment or information.

**Bail** - A sum of money or other form of security given to a court in exchange for the release of an accused from custody, to guarantee that the accused will appear in court.

**Bail Hearing** - A hearing that occurs usually within one day after the arrest of an individual at which a judge or judicial officer reviews the case and determines if the individual is eligible for release or if bail should be set.

**Bail Review** - A hearing that occurs usually the day following the bail hearing if an individual is not released at the bail hearing, or cannot pay the bail set at the bail hearing, where a judge determines if the bail set at the hearing was appropriate, sets a final bail amount and establishes a trial date.

**Bench Trial** - A trial held before a judge sitting without a jury.

**Beyond a Reasonable Doubt** - In a criminal case, the accused's guilt must be established "beyond a reasonable doubt," which means that facts proven must, by virtue of their probative force, establish guilt.

**Booking** - Police collection of information about an arrestee, including name, address, fingerprinting, photograph, and criminal record.

**Burden of Proof** - The necessity of proving facts at issue. The criminal burden of proof in Massachusetts is "beyond a reasonable doubt."

**Clerk** - an officer of the court who maintains case files, makes docket entries, issues processes, and generally serves as the ministerial arm of the court.

**Competency** - Possessing sufficient mental ability to understand an issue, problem, or situation; to make a reasonable decision concerning it; and to understand and appreciate the potential consequences of the decision.

**Competency Evaluation** - A formal evaluation to determine an individual's ability to understand the court process, the offense being charged, the possible penalty, and the possible dispositions.

**Committee for Public Counsel Services (CPCS)** - The public defender agency in Massachusetts.

**Conditional Release** - The release of a person from a facility with certain court required conditions.

**Continuance without a Finding** - Admitting that the prosecution does have enough evidence for a reasonable jury to find a person guilty of the charged offense. Instead of fighting the case a person would agree to be placed on probation and the court will continue the case for a certain period of time without a guilty finding, so long as conditions of probation are met. If a person fails to adhere to the conditions of probation or is charged with any new offenses before the case is dismissed, the case may come back in front of a judge. If a person is able to successfully complete the term of probation without any problems, the case will be dismissed.

**Conviction** - The determination of guilt based on a plea, a jury verdict, or a finding of a judge.

**Counsel** - An individual who is admitted to practice in a court of law and gives legal advice.

**Court** - A judge or body of judges whose task is to hear cases and administer justice.

**Defendant** - A person who has been charged with a violation of the law or criminal wrongdoing.

**Emergency Services Program (ESP)** - Provides crisis assessment, intervention, and stabilization services 24 hours per day, seven days per week, and 365 days per year to people of all ages who may be experiencing a behavioral health crisis.

**Felony** - The more serious of two categories to which criminal offenses are assigned (compare **Misdemeanor**). Felonies are those criminal offenses that are punishable by a period of incarceration in prison for more than 1 year.

**Finding** - A determination of fact by a judicial officer or jury.

**Fine** - A sum of money that a person must pay as punishment because of an illegal act or omission.

**Grand Jury** - A jury composed of 23 individuals who receive and hear evidence to determine whether probable cause exists that a crime has been committed and to determine whether an indictment should be returned.

**Guilty Plea** - A formal admission of guilt to an offense charged in a charging document.

**Incarcerate** - To confine to a jail or correctional institution.

**Incompetency** - Lack of capacity to understand the nature and object of the proceedings, to consult with counsel, and to assist in preparing a defense.

**Indictment** - A charging document returned by a grand jury and filed in a circuit court.

**Indigent** - Unable by reason of poverty or insufficient financial means to pay.

**Initial Appearance** - The first appearance of a defendant before a judicial officer by reason of execution of a warrant or before the court, in person or by an attorney, in response to a summons.

**Insanity Defense** - A claim by a defendant that they lack the soundness of mind required by law to accept responsibility for a criminal act. Not available in Massachusetts. See Lack of Criminal Responsibility.

**Involuntary (as in evaluation, commitment, or hospitalization)** - Compelled, required or exacted against somebody's will or wishes.

**Jail Diversion** - The diversion of individuals from jail and the criminal justice system to community services and supports.

**Judgment** - The final order of a court; in a criminal case, the conviction and sentence constitute the judgment, so there is no judgment until sentence is imposed.

**Judicial Officer** - A judge or a District Court commissioner.

**Jurisdiction** - The authority by which courts receive and decide cases.

**Jury** - A group of citizens qualified and selected according to law and impaneled to determine the guilt or innocence of a defendant in a criminal case.

**Lack of Criminal Responsibility** - A claim by a defendant that they were unable to realize that their behavior was wrong or was unable to make themselves behave as the law requires.

**Mental Health Court** - Problem-solving courts with a dedicated mental health docket, focusing exclusively on people who have been diagnosed with mental health conditions, and linking them to treatment and support services instead of imprisonment.

**Minor** - An individual under the age of 18 years.

**Miranda Warning** - A requirement based on a United State Supreme Court decision that a person be advised of certain Constitutional rights against self-incrimination at the time of arrest and before questioning.

**Misdemeanor** - The less serious of two categories to which criminal offenses are assigned (compare **Felony**). In Massachusetts, a misdemeanor is any criminal offense that does not carry the potential for state prison time. A misdemeanor can carry a jail sentence of up to 2½ years. Those who are convicted of misdemeanors will serve their sentence in a jail.

**Mitigation** - Circumstances suggesting that a lesser sentence is appropriate.

**Nolo Contendere** - "I will not contest"; a plea that has the effect of a guilty plea, although guilt is neither admitted nor denied, which plea may be used as an admission of guilt in a civil suit for the same offense. A defendant may plead nolo contendere only with the consent of the court.

**Offense** - A violation of a criminal law.

**Order** - A ruling of a court, on a motion, objection, or other matter relating to a preliminary point or some step in a proceeding.

**Parole** - A conditional release from imprisonment that is made by a parole board and entitles a defendant to serve the remainder of a sentence outside of prison as long as all of the conditions of release are met.

**Personal Recognizance** - A guarantee of a defendant's appearance in court based solely on his signed promise.

**Plea** - An answer to a criminal charge including: not guilty, guilty, nolo contendere, not

criminally responsible by reason of insanity.

**Plea Bargain** - Agreement between a prosecutor and defendant to exchange a plea of guilty or nolo contendere for reduction in a charge(s) or leniency in sentencing.

**Preliminary Hearing** - A hearing held, unless waived by defendant, to determine whether there is probable cause to believe the defendant committed an offense(s).

**Preponderance of the Evidence** - Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

**Pre-sentence Report** - A confidential report ordered by the judge and produced by the Division of Parole and Probation, prior to sentencing, to provide background information (job, finances, family status, community ties, etc.) and prior criminal record of a defendant and, in certain cases, a victim impact statement.

**Pretrial Release** - Release of a defendant prior to trial, often subject to conditions the judge believes will decrease the risk that the defendant will present a danger to the community or fail to appear in court. This could include staying away from the victim, submitting to drug tests or a psychiatric evaluation, living with another responsible party, getting mental health treatment, or bail.

**Probable Cause** - Reasonable grounds for belief in the existence of facts that support a charge; the basis for issuing a charging document or search warrant.

**Probation** - A conditional avoidance of some or all imprisonment granted by a judge after conviction of a defendant and before or as part of imposition of sentence.

**Prosecutor** - A public officer whose duty is prosecution of criminal proceedings on behalf of the citizens of jurisdiction.

**Sentencing** - The post-conviction stage of the criminal justice process in which the defendant is brought before the court for imposition of punishment to be inflicted.

**Waive** - Means to relinquish, used commonly to refer to the giving up of a legal right voluntarily, intentionally, and with full knowledge of the consequences.

**Warrant** - A written order issued by a judicial officer directing a peace officer to arrest the person named or to search for and seize property described.

**Witness** - A person who testifies as to what was seen, heard, or otherwise known.

Road Map through the Criminal Justice System  
for People with Mental Health Symptoms in Massachusetts  
NAMI Massachusetts  
updated June 2020