

12. Fitness for Trial Review

This flowchart outlines the process of reviewing a decision by the Mental Health Court that a person is temporarily unfit for trial.

Unless otherwise specified, references to sections (s) are in relation to the *Mental Health Act 2016* (Qld).

A person's criminal charges may be referred to the Mental Health Court for determination of whether the person should be given a defence due to their mental illness or intellectual disability. This can result in a finding that a person is not fit for trial. Refer to the flowcharts 'What happens to criminal charges if a patient has a mental illness/intellectual disability?'

Parties to a review are

- the person,
 - the administrator of the authorised mental health service and chief psychiatrist, if they are responsible for the person
 - The Forensic Disability Service and Director of Forensic Disability, if they are responsible for the person
 - Attorney-General
- S 487, s 736

Attendance at hearing

- the patient is encouraged to, but does not have to attend the hearing.
- The person will be appointed a free legal representative, unless already represented or patient waives right to representation, s740.
- Patient can bring a support person, s 739
- One or more members of the patient's treating team must attend the hearing.
- Hearings can be attended in person, by phone or, if available, by videoconferencing.

Evidence considered by MHRT

- Documents
 - Clinical report
 - Most recent decision from the MHRT
 - Hearing Notice
 - Dossier (Mental Health Court order, and other relevant documents) the Mental Health Court and any reports)
 - If applicant review— application form
 - Any other documents submitted by doctor applicant or patient (including patient self-report)
- Oral information given by people attending the hearing.

There is no criteria for fitness for trial in the *Mental Health Act 2016*. The MHRT uses the criteria from *R v Presser* [1958] VR 45 (the *Presser* test) to make a decision about fitness. The *Presser* test states that for a person to be fit for trial, they must be able to do all of the following:

1. *Ability to understand the charge* — this involves a basic understanding of the essential facts of the charge and the elements of the offence.
2. *Ability to plead to the charge and to exercise the right of challenge* — the client must understand that a plea of guilty is an acceptance that the essential facts and elements of the offence are established.
3. *An understanding of the nature of the proceedings, namely, that it is an inquiry as to whether he/she committed the offence charged* — the client must understand that he/she is involved in a formal process inquiring into his/ her responsibility for the matter alleged and be aware of the potential consequences of that process.
4. *Ability to follow the course of proceedings so as to understand what is happening in court in a general sense, though not necessarily understand the purpose of all the various court formalities* — this involves following the proceedings and understanding the roles of the various participants.
5. *Ability to understand the substantial effect of the evidence that may be given* — the client must have an awareness of the implications of the prosecution evidence.
6. *Ability to make a defence or answer to the charge* — the client must be able to give the court a basic version of the facts as he/she claims them to be, if necessary through his/her lawyer, by entering the witnesses box and responding to questions in evidence-in-chief and cross-examination.

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