

4. What happens to criminal charge(s) if a person has a mental illness?

In Queensland, a person's criminal charges can be dismissed or discontinued if the Court agrees that the person was of unsound mind at the time of the offences or is currently unfit for trial.
Unless otherwise specified, references to sections(s) are from the *Mental Health Act 2016*

Custody and Hospital
If a person has not been granted bail, and a doctor says they need to go to hospital for treatment for their mental illness, the person may be transferred to an authorised mental health service as a **classified patient**. This can be voluntary (with their consent) or involuntary. Once the person is well enough, they will be returned to custody. s 74, 75, 83
[See flowchart 9 'Becoming a Classified Patient']

Intellectual Disability
If the person does not have mental illness but has intellectual or cognitive disability which affects their criminal responsibility for the charges, see flowchart 5 'What happens to criminal charge(s) if a person has an intellectual or cognitive disability'

Simple Offences and Indictable Offences
See <https://queenslandlawhandbook.org.au/the-queensland-law-handbook/offenders-and-victims/introduction-to-criminal-law/types-of-criminal-offences/>

When a person first appears in court they can represent themselves, see the duty lawyer, apply for legal aid or pay for a lawyer. **If mental illness/cognitive impairment is relevant to the charges, they should speak to a lawyer.**

Does the person, their doctors, their lawyer, the Court or the Police think that:

- The person's mental illness affected them to the extent that they were of 'unsound mind' at the time of the alleged offence(s)? s 109**
- Because of their mental illness, the person may be unable to follow court proceedings? (unfit for trial)**

Yes to either, OR Don't Know No to both

The criminal charges are:

The criminal charges will continue through the normal court process, but the person's mental illness can still be taken into account at a Case Conference, mediation with complainant, or at sentence.

Simple Offences (eg minor) and Indictable Offences that must be heard by a Magistrate

Other Indictable Offences (eg more serious)

The duty lawyer or other lawyer can ask for an adjournment to see the Court Liaison Service who can prepare a report for the court about whether the person was of unsound mind and/or is fit for trial. The person could also obtain their own report at their own expense.

The person can ask for an adjournment to get legal advice about whether to get a psychiatrist to prepare a report. If the person is already on an order (Treatment Authority, Forensic Order or Treatment Support Order), the person should be informed by their health service that they can ask their treating team to provide a report about whether they were of unsound mind or are unfit for trial. s 89, 90
The Chief Psychiatrist can request a report. s 93, 95
The criminal matters will be suspended while the report is prepared.
The report may say:

A. The person was not of unsound mind and is fit for trial.
The person will go through the normal court process for the charges, and they can decide whether to plead guilty or not guilty.

B. Because of the person's mental illness, the charges should be dismissed.
The Magistrate will consider the report and can decide to dismiss the charge(s) and make no more orders. This ends the criminal matter. s 172

C. The person is currently unfit for trial but might improve within 6 months.
The charges will be adjourned and the person will come back to the Magistrates Court at a later date. S 173

D. Because of the person's mental illness and the nature of the (indictable) offences, the charges should be dealt with by the Mental Health Court. The person, their lawyer, the DPP (s 110), the Chief Psychiatrist (s 101) or the Court (s 175, 183)) may refer the matter to the Mental Health Court. The criminal proceedings are suspended and the person will have a Mental Health Court hearing at a later date.

The person's mental illness does not affect the charges.
The criminal charges will continue through the normal court process but the person's mental illness may still be taken into account as part of the proceedings.

The Magistrate can make an examination order, requiring the person to be examined by a psychiatrist. This can lead to mental health treatment without the person's consent and/or a report which can be used by the Magistrate to make a decision. s 177—180B
If the person does not have a mental illness, the Magistrate can refer the person to an agency, health department or disability service for care. s 174

The Mental Health Court will hear evidence, including from the doctors who have written reports and decide:

That the person was not of unsound mind and they are fit for trial. s 123

That the person was of unsound mind at the time of the alleged offence. s 116,117 The charges are discontinued, although the person can still elect to be tried for the offence. s 119.
The court can then make a forensic order (mental illness), treatment support order or no order. s 130, 133, 134, 143

The person is permanently not fit for trial. The charges are discontinued. S 122
The court can then make a forensic order (mental illness), treatment support order, or no order. s 130, 133, 134, 143

The person is not fit for trial but this is not permanent. The charges are suspended until the Mental Health Review Tribunal decides that the person has become fit for trial. The Mental Health Court must make a forensic order (mental illness) or treatment support order while charges are suspended. s 132

Forensic Orders (Mental Illness) and Treatment Support Orders
If the Mental Health Court thinks it is necessary, because of the person's mental condition, to protect the safety of the community, then a Forensic Order (Mental Illness) or a Treatment Support Order will be made which permits involuntary treatment and care for the person's mental illness, and involuntary care if the person also has an intellectual disability (s 134, 151). A treatment support order is less restrictive than a forensic order. The order is reviewed by the Mental Health Review Tribunal every 6 months.