

5. What happens to criminal charge (s) if a person has an intellectual disability?

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.

In this flowchart, "intellectual disability" refers to intellectual or cognitive disability, but not mental illness.

Unless otherwise specified, references to sections (s) are from the *Mental Health Act 2016*

Mental Illness

If the person also has a mental illness which affects their criminal responsibility for the charges or requires involuntary treatment and care, please refer to the **flowchart 4 'What happens to criminal charge(s) if a person has a mental illness'**

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

Yes to either, OR
Don't Know

No to both

The criminal charge(s) are:

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

Simple Offences and Indictable Offences that must be heard by a Magistrate

Other Indictable Offences (eg more

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 report.

If the person is already on an order (Forensic Order (Disability)), the person should be informed by the responsible health service/forensic disability service that they can ask their care team to provide a report about whether they were of unsound mind or are unfit for trial. s 89, 90

The Chief Psychiatrist/Director of Forensic Disability can request a report. s 93, 95 & 104

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 intellectual disability, 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 intellectual disability 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 / Director of Forensic Disability (s 101, 104) 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 intellectual disability does not affect the charges. The criminal charges will continue through the normal court process but the person's intellectual disability 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. The person will go through the normal court process for the charges, and they can decide whether to plead guilty or not guilty 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 (disability) or no order. s 130, 133, 134

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

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 (disability) while proceedings are

Forensic Orders (Disability)

If the Mental Health Court thinks it is necessary, because of the person's mental condition, to protect the safety of the community, a Forensic Order (Disability) may be made, which permits the involuntary care for the person's disability. s 134, s 152 The order is reviewed by the Mental Health Review Tribunal every 6 months.