



Fitness to Stand Trial Assessments and Treatment Orders (Criminal Code of Canada Part XX.1)

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I have been found Unfit to Stand Trial (Unfit) – What does it mean?

- A court may find you Unfit if you are unable to participate in the defence of charges against you because of a mental disorder or illness. The court will examine whether you understand the nature of the trial (who are the people involved, what is the process), whether you understand the possible consequences (what could happen at the end of the trial) and whether you can communicate effectively with your lawyer.
- You are presumed fit to stand trial unless proven otherwise. The issue can be raised by you (or your lawyer), the Crown or the court. It can only be raised by the Crown in certain circumstances. Whoever raises the issue has the obligation of proving it.
- There may be a review of the issue at any time during the trial. At an assessment hearing, evidence may be called by the Crown and the defence in a mini-trial to decide the issue.

I have been ordered to have a Fitness Assessment – what is that?

- When the court is trying to decide whether or not you are fit to stand trial, they often need the assistance of a doctor. The court can order a fitness assessment of an accused person at any time during the trial and a doctor will examine the accused.
- In some cities there are specialized mental health courts that can do assessments very quickly, often that same day. In other places or in more complicated circumstances, an assessment will take place over a period of time.

Will I be in hospital or jail for the assessment? For how long?

- The basic rule is that you are not in custody for an assessment hearing unless it is necessary for the assessment or where you are charged with specific offences. Assessments may be done while you are in custody at a jail. Often, however, you will go to a hospital for an assessment. You may have to stay in jail for a period of time until there is a bed available in hospital. You should speak to your lawyer about this - particularly if it looks like you may be in jail for a long time waiting for your assessment.
- Generally assessments are 30 days or less but the court can order, in exceptional cases, assessments of up to 60 days.

What happens during the assessment?

- You will be observed, examined and interviewed by health care professionals to determine whether you are able to participate in your trial.
- The information that you share with the health care professionals will likely be shared with the court, particularly any information that will help decide whether you are Unfit.

Will I receive treatment?

- As assessment order is limited to examination and cannot order you to undergo treatment.
- You may receive treatment during an assessment period but only if you consent to treatment or, if you are not capable to make treatment decisions, your Substitute Decision-Maker consents.

When can the court order treatment?

- In very rare cases, after a verdict of “unfit to stand trial”, the court can order that you undergo treatment in limited circumstances. The order cannot exceed 60 days.
- Before the court makes such an order, it must be satisfied, on the basis of medical evidence, that a specific treatment will make you fit to stand trial within 60 days. The court must also be convinced that you would not otherwise become fit, that the risk of harm from the treatment is not disproportionate to the benefit and that it must be the least restrictive and least intrusive treatment. They cannot order psycho-surgery or electro-convulsive therapy (ECT).
- The court has to give you the opportunity to argue against an order for treatment. Notice will be given to you or your lawyer before this happens. The hospital where the treatment will take place must also consent.

Questions?

If you have questions contact your local Patient Advocate or call the central office of the Psychiatric Patient Advocate Office at 1-800-578-2343.