

# Out of Custody Treatment Order

Law and Mental Health Program  
Centre for Addiction and Mental Health

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# Agenda

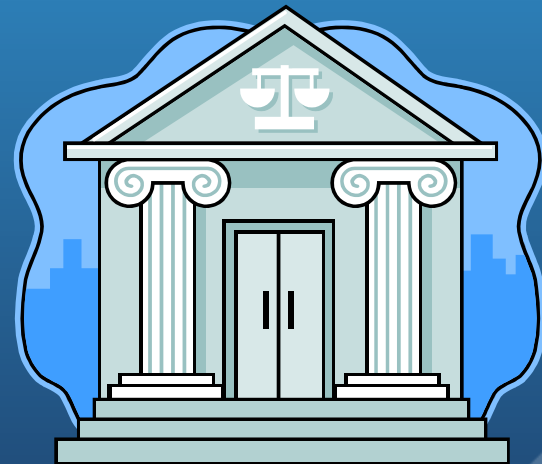
- Overview of Systemic Issues
- Fitness to Stand Trial & Treatment Order
- Out of Custody Treatment Order: Innovative Practice
- Three Case Studies
- Concluding Remarks

# Law and Mental Health Program

- Continuum of care including:
  - assessment
  - treatment
  - rehabilitation
- Secure & general secure units
- Community supervision
- Consultation & specialty services

# Protections for Mentally Ill Involved with the Criminal System

- Mental Disorder Provisions of the Criminal Code of Canada (1992)
- Canadian Charter of Rights and Freedoms
- Supreme Court of Canada
- Other case law



# Mental Health Court



- Established in Toronto in 1998
- In response to legislative and policy initiatives to protect vulnerable population of mentally ill in the criminal justice system
- Specialty court designed to provide more appropriate legal process to mentally ill accused

# Collaboration with the Courts

## BENEFITS

- Improved outcomes for mentally ill the criminal justice system
- Reduced waiting in jail for a hospital bed
- Increased ability of the hospital to respond to forthwith admission

# Collaboration with the Courts

## CHALLENGES

- Increased protections have resulted in increased pressures on hospital resources
- The effect of moving mentally ill from the criminal justice system to the forensic mental health care system
- Increased admission to hospitals
- We have experienced such pressure in the LAMHP

# Collaboration with the Courts

## CHALLENGES

- Forensic Beds are finite
- Forensic admissions are often “forced” and “forthwith”
- Forensic patients remain in hospital for a significant period of time
- Discharges are directed by the ORB and beyond the direct control of the hospital

# Forthwith Orders

No provision in the Criminal Code of Canada for the detention of mentally ill accused, in jail, awaiting a psychiatric assessment



# Judge Nordheimer (April 2011)

*"...there must be some allowance of time for the implementation of treatment for these individuals. Neither an accused person nor a court can reasonably expect that treatment facilities will be available immediately upon a determination that the accused person suffers from a serious mental illness."*

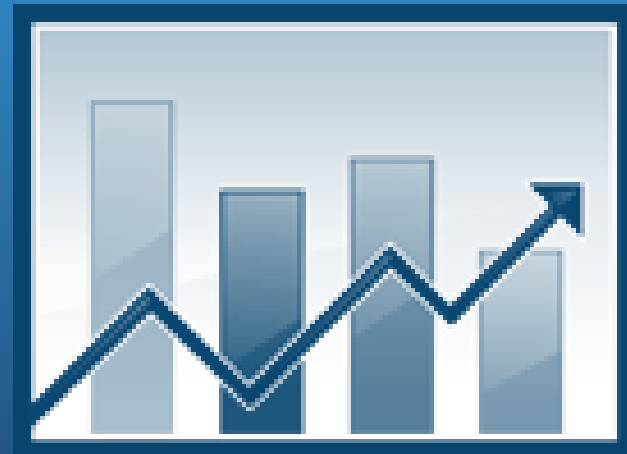


# 103% Capacity

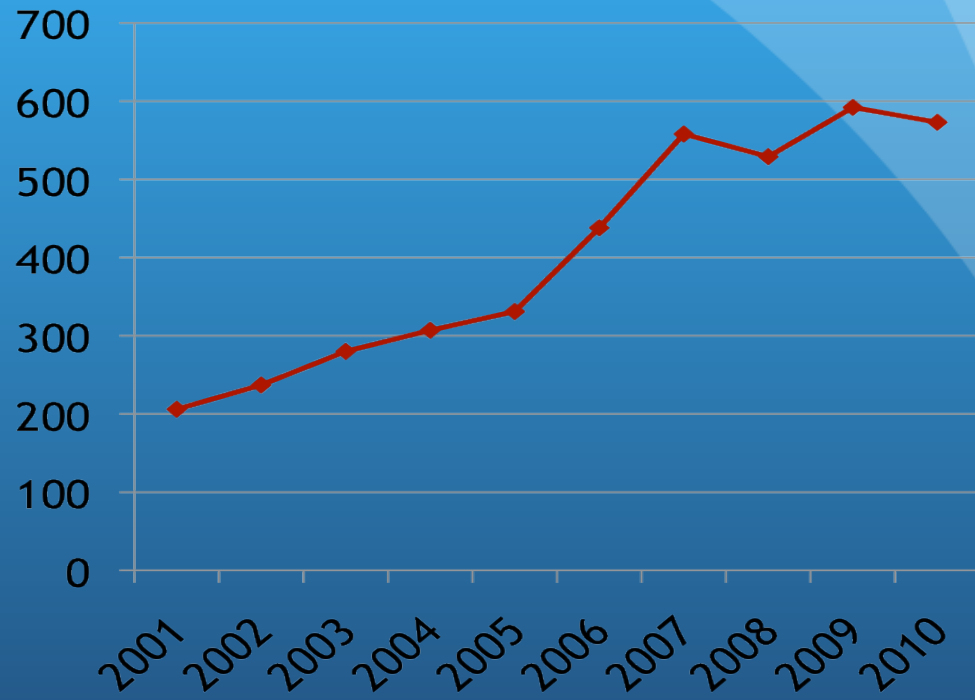
UNIT	CLIENTS	ALOS
1x Assessment	28	230
2x Secure	40	835
1x Secure (Women)	6	632
3x General Secure	83	1078
1x Secure Observation & Treatment	8	750
Out Patient Services	300+	n/a

# More Demand...

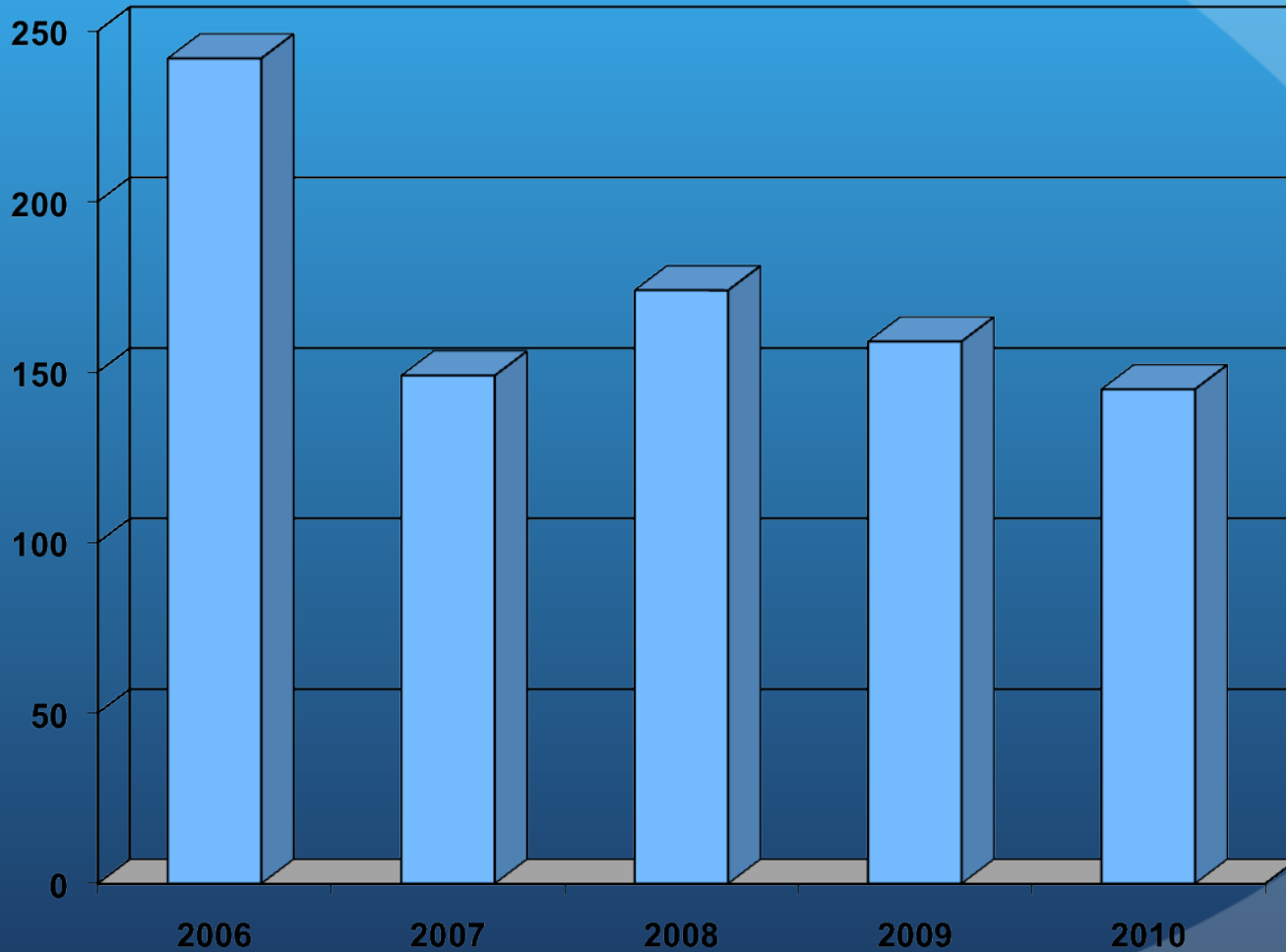
- Inter-hospital:  
Total: 13 secure & 7  
general secure
- Detention:  
3 WOC & 0 Treatment  
Orders
- Brief Assessment Unit:  
Booking appointments  
beginning of December  
2011



- 2001 - 206 hearings
- 2002 - 237 hearings
- 2003 - 280 hearings
- 2004 - 307 hearings
- 2005 - 331 hearings
- 2006 - 438 hearings
- 2007 - 558 hearings
- 2008 - 529 hearings
- 2009 - 592 hearings
- 2010 - 573 hearings



# LATU Admissions



# Assessment & Treatment Unit

- Admit and triage patients detained in hospital under an ORB disposition:
  - NCR or Unfit to Stand Trial by the courts
- Conduct psychiatric assessments for the courts in the greater Toronto area
  - Patients are admitted by a court order
- Conduct court ordered treatment

# Fitness to Stand Trial

# Fitness to Stand Trial

- Historical precedent
- Presumption of fitness
- Raised at any point in proceedings
- Any party to proceedings

## “Taylor Test”: Three Arms

1. Nature/Object proceedings
2. Consequences proceedings
3. Communicate with council

# Fitness to Stand Trial

What has to be established:

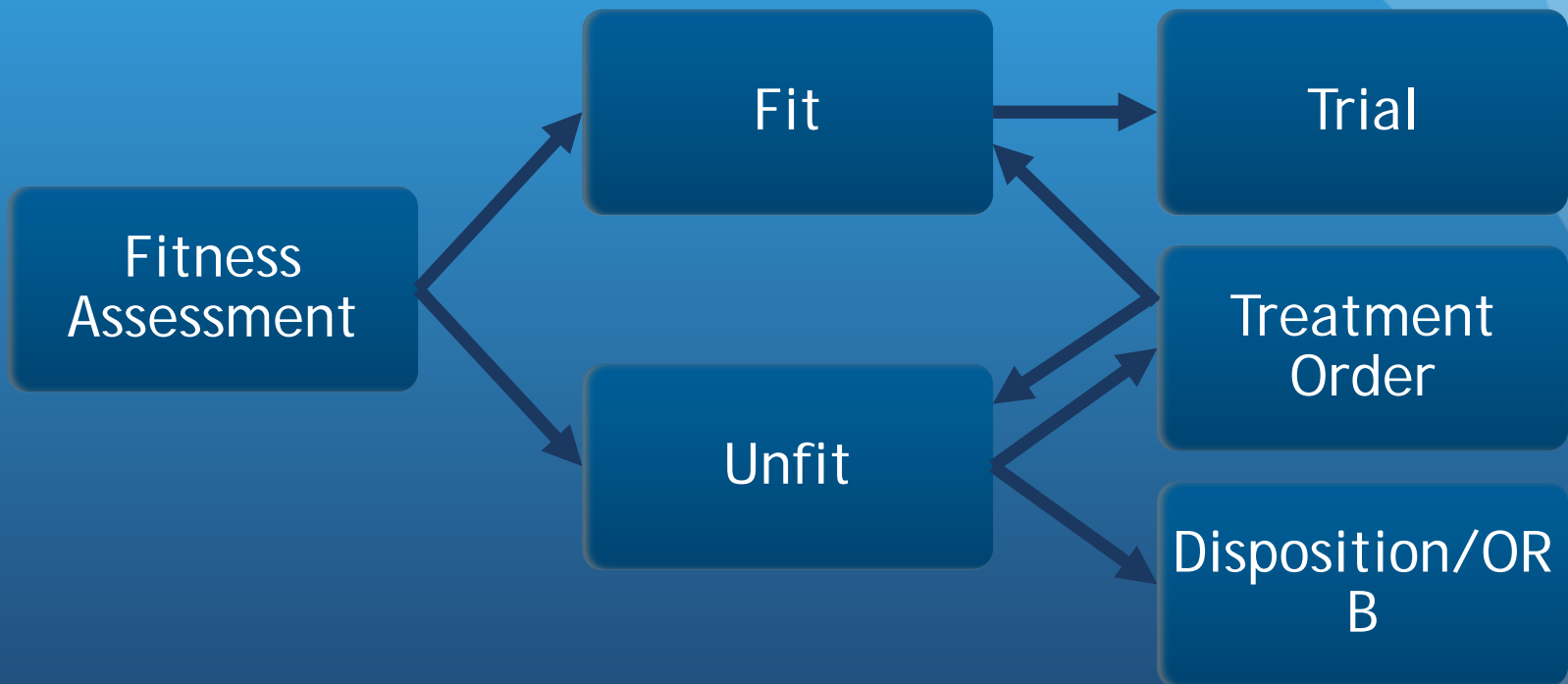
- Does the individual understand that he/she is facing criminal charges?
- Do they know what the charges are?
- Do they know the meaning of an oath?
- Do they understand the consequences for not telling the truth?

# Fitness to Stand Trial

What has to be established:

- Do they understand the role of the judge; crown attorney, their own counsel?
- Do they know the pleas available to them?
- Do they know the possible outcomes of the proceedings?
- Can they instruct counsel?

# Fitness Concerns



# Treatment Order

- Although section 672.19 of the Code states that “No assessment order may direct that psychiatric or any other treatment of the accused be carried out, or direct the accused to submit to such treatment”, there are circumstances where the Code does allow treatment to be ordered
- Section 672.58 states that the court may, on application by the prosecutor, direct that treatment of the accused be carried out for a specified period not exceeding sixty days to make the person fit, subject to conditions. Medical evidence must demonstrate that treatment is likely to make the person fit within sixty days, that risk of harm is not disproportionate to benefit, and that the treatment is the least restrictive and least intrusive.

# Treatment Order: The Essentials

- Unfit
- To return fitness
- Crown application
- 60 days
- Once only
- Specific criterion
- Historical “presumption” occurs in hospital

# Out of Custody Treatment Order

Innovative Practice

# Treatment Order: In-Patient

- Criminal Code of Canada provides the judiciary with the power to issue treatment orders
- Does not mandate where treatment is to take place
- Traditionally, treatment orders have been executed from in-patient units
- Appropriate for acute mental illness and those who are a high risk for violence

# OCTO: Innovative Practice

- Lower mental health acuity
- Lower risk
- Accommodation and financial supports
- Existing mental health services

# OCTO Innovative Practice

## OCTO Team

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- Psychiatrist (two psychiatric sessions/week)
- Registered nurse
- Social worker
- Located at CAMH QS site

## Early Engagement

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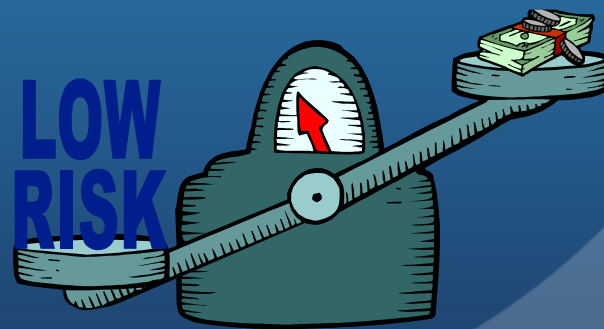
- 102 court
- LATU
- Maplehurst, Toronto Jail & Vanier

# OCTO Eligibility Criteria

- Person suffers from a serious mental illness resulting in unfitness to stand trial
- Likely to recover fitness after a period of outpatient mental health treatment
- Subject to a treatment order
- Benefits of treatment outweigh any side effects or risks of treatment
- The team concludes that the client can be effectively and safely managed in the community

# OCTO Public Safety

- Dynamic risk assessment
- Review of the alleged offense
- Prior behaviour and risk to others
- Relationship between these risks and the person's illness that can be modified by our clinical interventions



# OCTO Pathways & Points of Entry



102 Court



LATU/Inpatient  
Unit



Detention  
Centre/Jail



# OCTO Assessment Process

- Risk assessment
- Compliance with treatment
- Supportive housing/living conditions
- Financial support
- Awareness of mental illness
- Collateral information

# OCTO Process

- Mental Health Court - issue OCTO
- Bail Hearing
- Released to community
- Attend CAMH daily
- Breach of OCTO conditions - in custody
- Become fit - return to court

# OCTO Experiences

- Non-compliant with medication
- Court order WOC (not TO)
- Unfit - stabilized as inpatient - become fit
- Client too unwell to attend CAMH - flexibility with OCTO structure



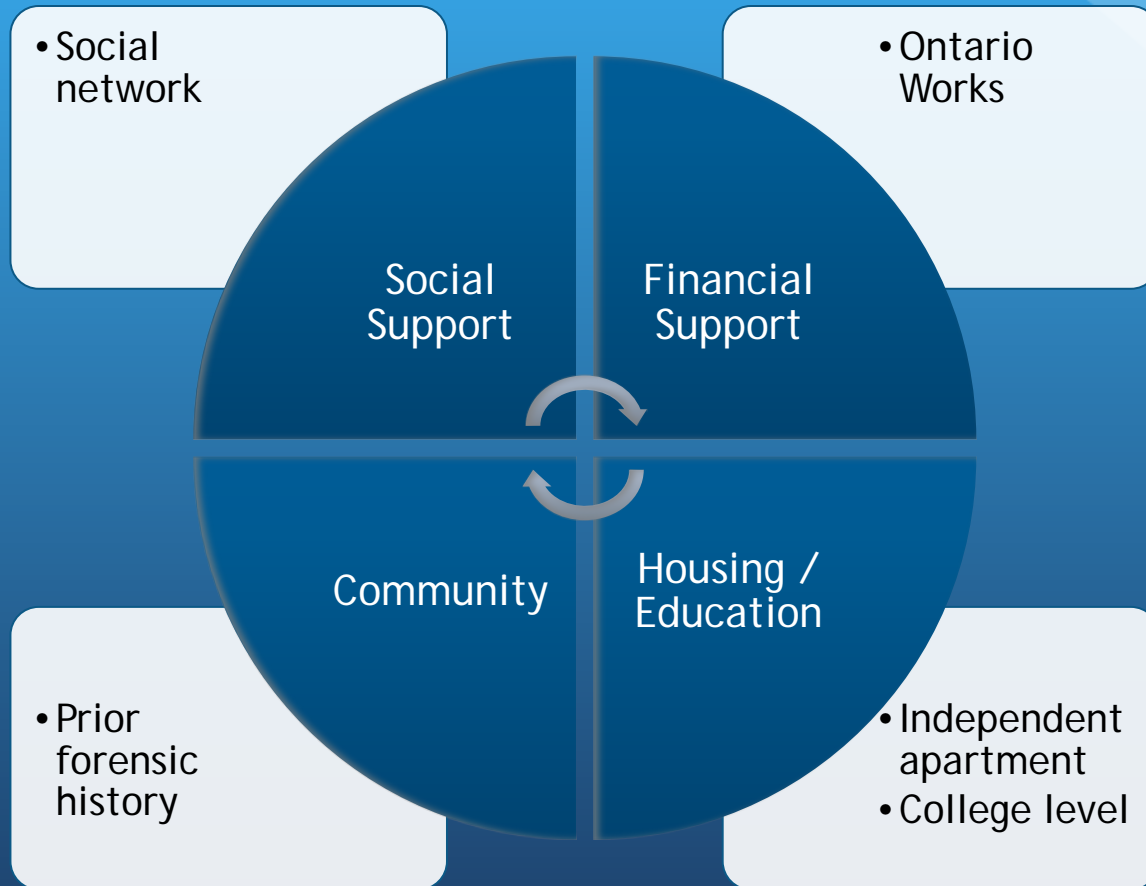
# Case Study A

Direct Entry from Mental Health Court

# Case Study A: History

- Gender: Female; Age: 46
- Relationship Status: Single
- Country of Birth: Canada
- Diagnosis: Delusional Disorder
- Remote Substance Use History
- Charge: Criminal Harassment
- Prior Contacts: Legal x 2; Forensic x 1; ORB x 1

# Case Study A: Protective Factors



# Case Study A: Services Offered

- Supervised Medication Administration
- Assessments (Multidisciplinary)
- Fitness Education
- Psychoeducation
- Metabolic Monitoring
- Assistance with Finances

# Case Study A: Risk Management

- Recognizance of Bail
- Contractual Agreement: “Goals and Expectations”
- Daily Reporting for Medications and MSE
- Urine Screens
- Court Reporting
- Correspondence with Crown
- Apprehension and Admission to Hospital if Breach

# Case Study A: Outcome

- Medication and Reporting Compliance
- Fit to Stand Trial
- Improved Mental State
- Discharged to Court Support Services
- ODSP Application Completed
- Partial Engagement
- 60 (or greater) Inpatient Hospital Days “Saved”

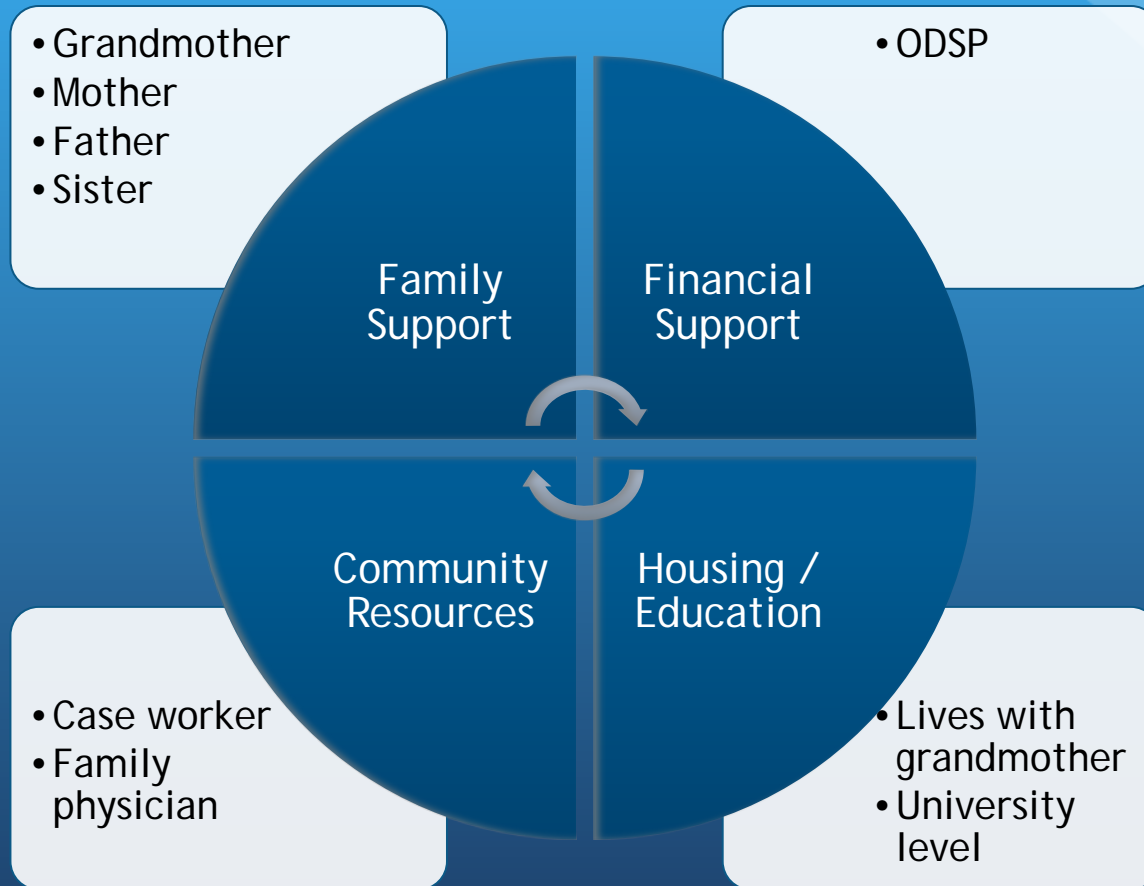
# Case Study B

Transition from inpatient to out of custody

# Case Study B: History

- Sex-Male; Age- 27
- Relationship status - Single
- Country of birth - Canada
- Diagnosis - Schizophrenia
- Charges - Assault PO; Assault x3; sex assault; utter threat; FTC recog; FCT prb. x3; cause disturb
- Prior Contacts - Legalx 27; Forensic x0; ORB x0
- Substance Use - Historical Cannabis use

# Case Study B: Protective Factors



# Case Study B: Services Offered

- Medication administration
- Assessments (multidisciplinary approach)
- Hospitalization
- Fitness coaching
- Dietary consultation
- Metabolic monitoring
- Symptom management
- TTC tokens & access to recreation activities

# Case Study B: Risk Management

- Contractual Agreement and therapeutic rapport
- Daily reporting for MSE and medication
- Fitness coaching
- Symptom management
- Psychiatric assessments
- Urine Screens as required
- Structured Bail Order
- Correspondence with Crown
- Police involvement as required
- Admission into the hospital if needed
- Family support
- Multidisciplinary Team

# Case Study B: Outcome

## Results

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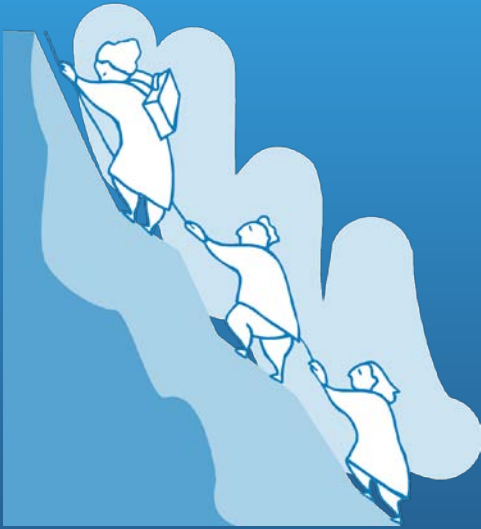
- Medication & reporting compliance
- Hospital Bed Saved-39 days
- Fit to stand Trial
- Stable MSE
- Therapeutic Rapport

## Discharge Summary

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- Discharged to Court 102 & court support workers
- Connected to community Psychiatrist & Across Boundaries Agency
- 30 day medication supply
- Discharged to live with Grandmother

# Case Study B: Challenges



- Dependency on CAMH system after discharge
- Elopement risks
- Risk of acquiring additional charges

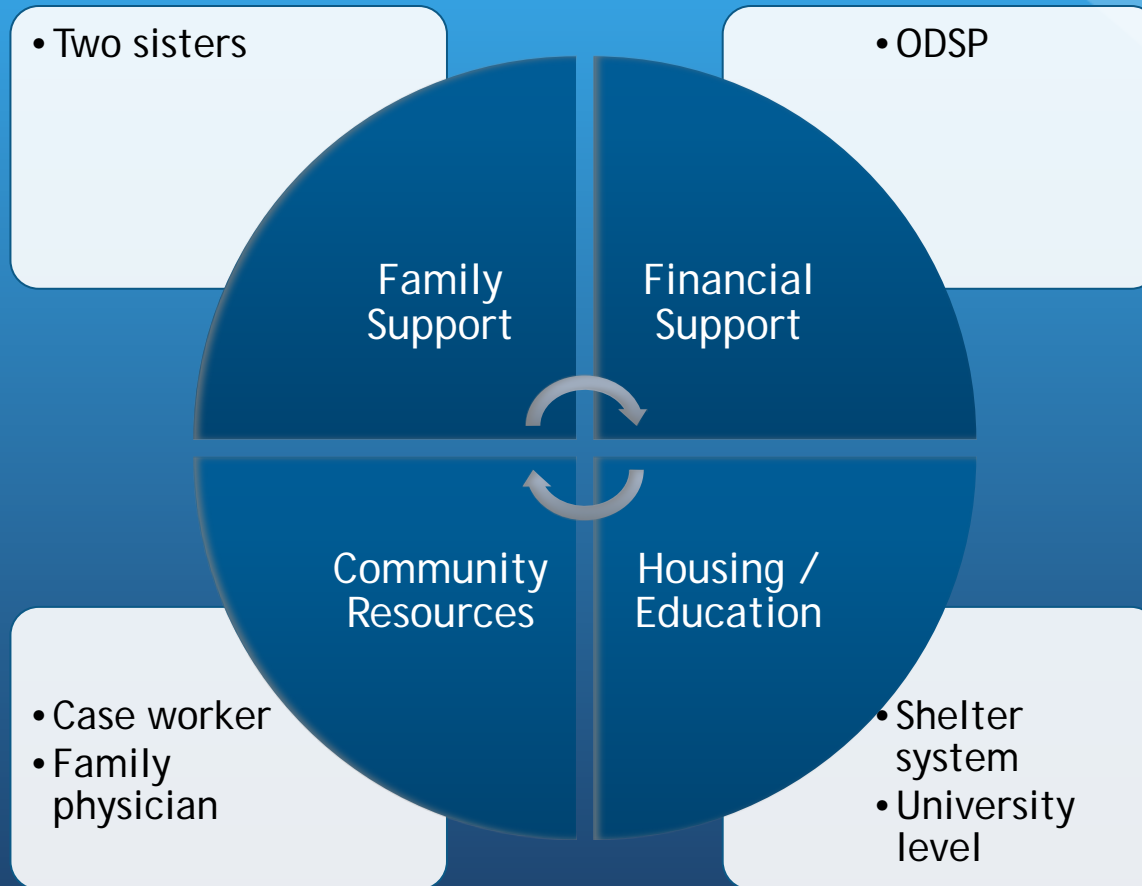
# Case Study C

Transition from Out of Custody to Inpatient

# Case Study C: History

- Sex - Male; Age - 36; Relationship status - Single
- Country of birth - Ethiopia
- Diagnosis - Schizophrenia
- Charges - FTC Prob x2; Threat death x2; assault x2; Threat BH
- Prior Contacts - Legal x2; Forensic x1; ORB x0
- Substance Use - Cocaine, Cannabis
- Rehabilitation - Failures on in-patient, Detox, Emergency , community support, shelter system

# Case Study C: Protective Factors



# Case Study C: Services Offered

- Medication
- Assessments
- Hospitalization
- Fitness coaching
- Symptom management

# Case Study C: Risk Management

- Contractual Agreement
- Daily reporting for MSE and medication
- Fitness coaching
- Symptom management
- Psychiatric assessments
- Urine Screens as required
- Structured Judge's Order
- Correspondence with Crown
- Police involvement as required
- Admission into the hospital if needed
- Family support
- Multidisciplinary Team

# Case Study C: Outcome

## Results

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- Non compliant with reporting & medication
- Zero Hospital Bed Days Saved
- Unstable MSE / Strained therapeutic Rapport
- Rearrested for TO breach
- Held in custody / In-patient treatment enforced

## Challenges

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- Non compliant with treatment nor reporting
- Lack of structure,
- Substance addiction
- Lack of motivation
- Risk of acquiring additional charges
- Defiant

# Final Comments

- Increasing demand requires novel approaches
- CCC compatible with approach
- Requires cooperation and coordination of stakeholders
- Flexible pathways critical
- Limited experience to date secondary to present structural issues
- Maximize service & minimize restriction

Questions...



THANK  
YOU