

The Intersection of Traumatic Brain injury and the Criminal Legal System

Northeastern Ontario Brain Injury Network Presentation

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Flora I. Matheson, Scientist

Madison Ford, Research Coordinator



ST. MICHAEL'S
UNITY HEALTH TORONTO



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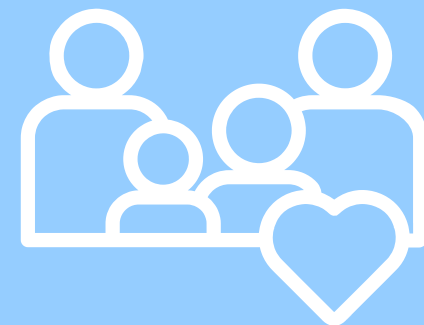
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BREAKING THE CYCLE NETWORK MEMBERS

COMMUNITY SUPPORT GROUPS



Mothers Offering Mutual Support

JUSTICE AND EQUITY RESEARCH LAB



PEOPLE WITH LIVED EXPERIENCE



JUSTICE SYSTEM PARTNERS



COMMUNITY JUSTICE & RE-ENTRY SERVICE AGENCIES

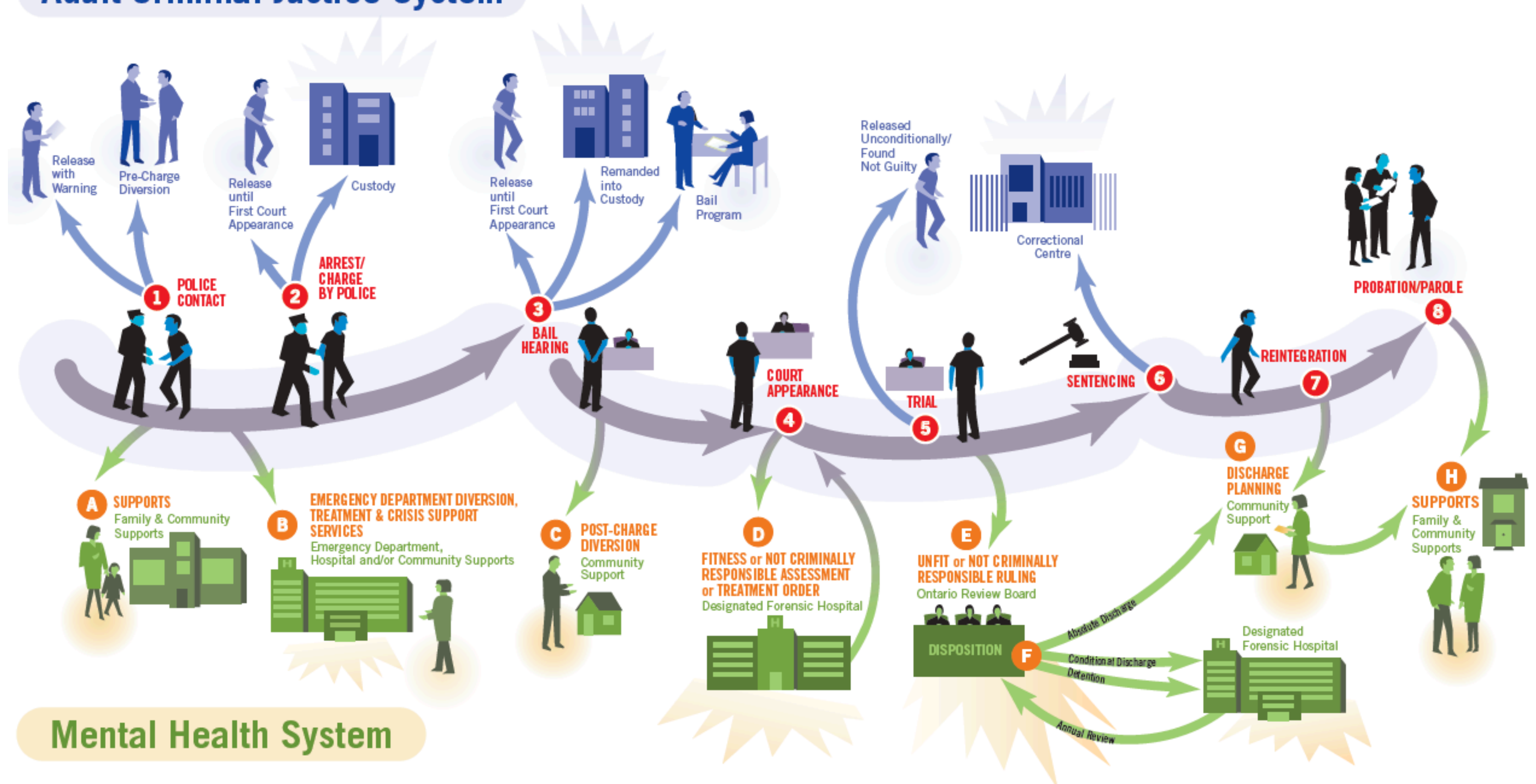


TRAUMATIC BRAIN INJURY SUPPORT ORGANIZATIONS



Navigating the Adult Criminal Justice & Mental Health Systems

Adult Criminal Justice System



BRAIN INJURY AND CRIMINAL-LEGAL INVOLVEMENT

80%

of people in the criminal-legal system are on bail or pre-trial custody in Ontario



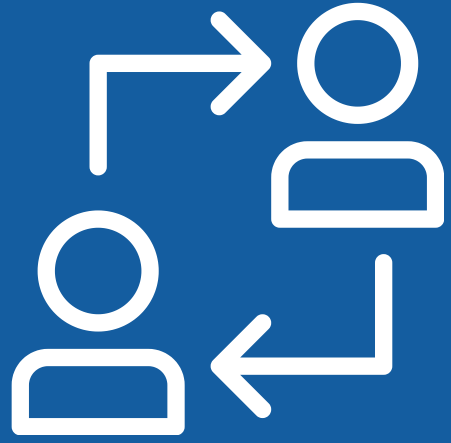
Up to 88%

of people who experience incarceration have history of head injury



(Diamond, 2007)





COMPLEX SOCIAL INTERACTIONS

Interactions with police, front-line workers, and probation/parole officers involves complex social interactions that require high-level and fast paced processing of information, understanding and responding.

(Wiseman-Hakes, 2023)



COGNITIVE IMPAIRMENT

Research identified that impairments in working memory and speed of processing are the main issues that compromise comprehension in these contexts.

(Wszalek & Turkstra, 2019)



EMOTIONAL DYSREGULATION

Increased anger, impulsivity and irritability create challenges for people involved with the criminal justice system.

(Gordon, 2012)

Brain Injury in the Context of the Criminal Legal System

Professional Misconceptions of Brain Injury

Due to limited awareness among people who work in the criminal legal system, challenges associated with brain injury can be misinterpreted as:



Non-compliance



Rudeness



Defiance



Poor motivation



Disengagement



Aggression



2.5 TIMES

MORE LIKELY TO BE INCARCERATED
THAN THOSE WITHOUT TBI.

(McIsaac, 2016)



Those with TBI are **14x** more likely to incur
an in-prison serious disciplinary charge

39.2% prevalence of
serious charges in
men with TBI

29.9% prevalence
of serious charges
in women with TBI

(Matheson, 2020)

BRAIN INJURY AND CRIMINAL-LEGAL INVOLVEMENT



**COMPLEX
SOCIAL
INTERACTIONS**

There's a lot of people out there [with brain injury], and if they... have a temper tantrum and throw their shoe at someone... they're getting arrested for assault with a weapon... [There are] many people who are not... necessarily well cared for by our system ... and they're having a really hard time integrating and adapting to both the rules and also the expectations. It's very hard to conform if you're not able to control your behaviour. Then people think you're bad or you're a criminal or you should be arrested and actually none of that is helping... [Brain injury] doesn't get recognized right away and it may be identified as a mental health issue, but actually it's more complex than that. (KI 12, Criminal Defence Lawyer)



BRAIN INJURY AND CRIMINAL-LEGAL INVOLVEMENT



COGNITIVE IMPAIRMENT

“

The clients with ABIs aren't always as easy to, easy to identify... but you come to observe that they're not necessarily absorbing the information in the same way and maybe there's communication issues or they can't make it to court on time or they can't make it to appointments on time and it seems like no matter what your best efforts are and they agree for them to be at a place at a certain time they just can't make it. (KI 12, Criminal Defence Lawyer)

”

(Catch-22 Study)

BRAIN INJURY AND CRIMINAL-LEGAL INVOLVEMENT



**EMOTIONAL
DYSREGULATION**

“—

I have an impulse problem. I don't know how to tell myself 'No, I shouldn't do that.' (...) That's the head injury in itself because you say stupid shit, you do stupid shit, you're going to get stupid shit done to you and the system doesn't even care. They just keep putting you back through the revolving door. (UC 26)

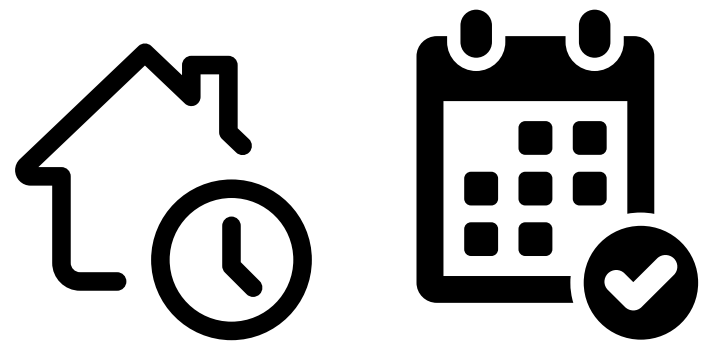


(Catch-22 Study)

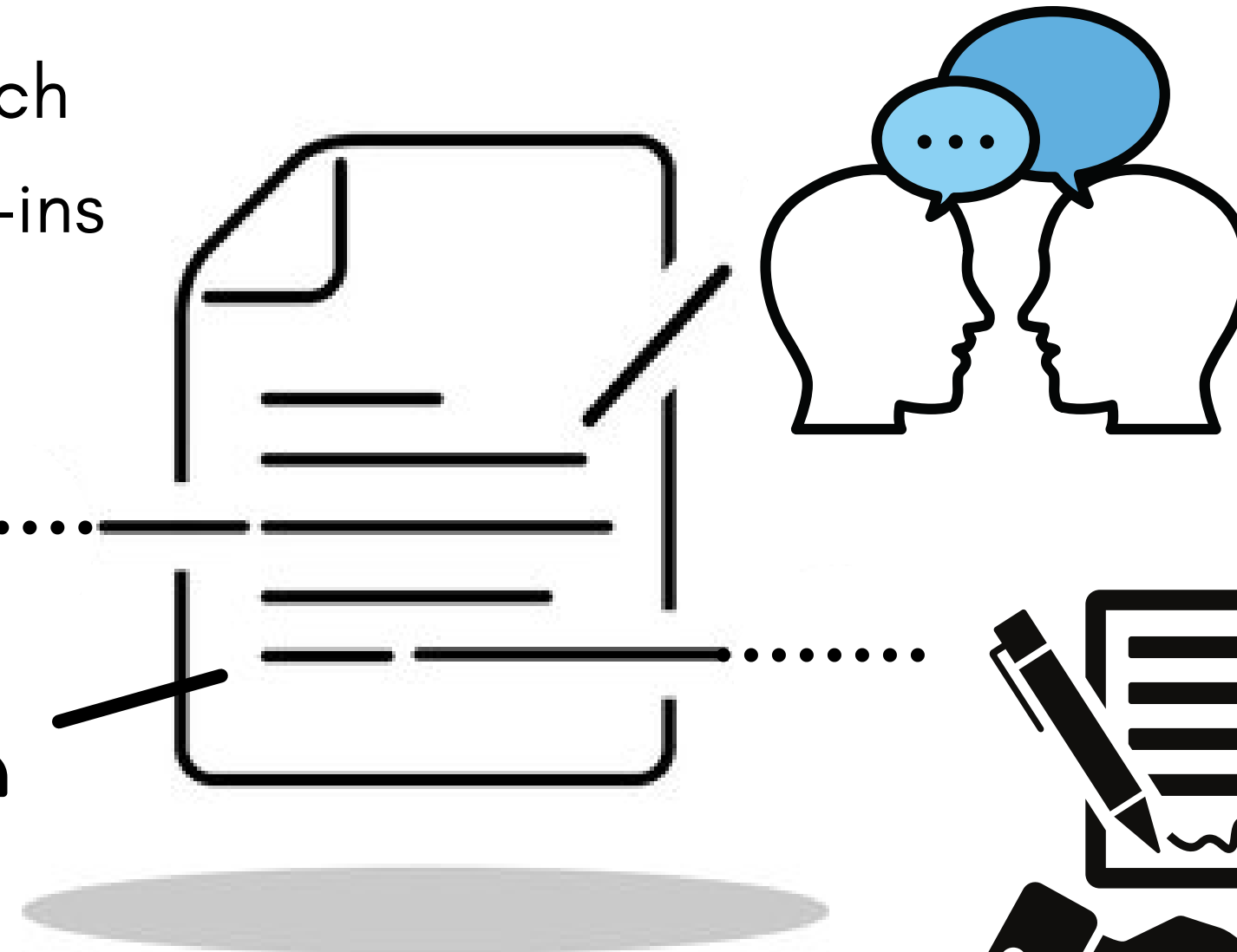
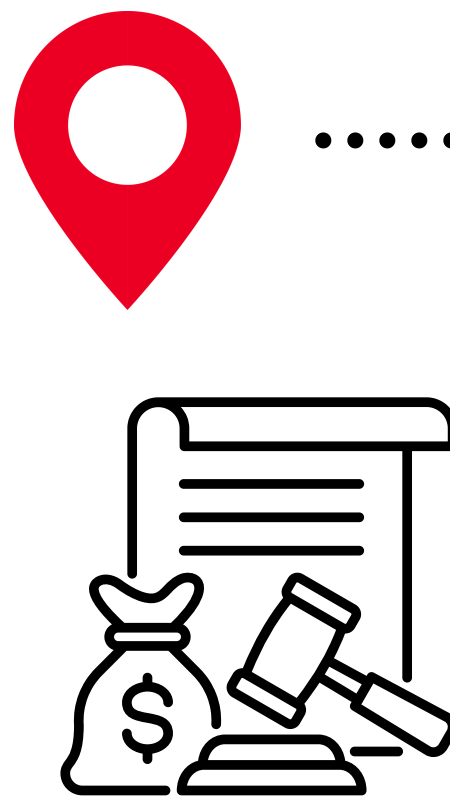
BRAIN INJURY AND BAIL

Brain injury can make it difficult for a person to:

Remember important details, such as curfews, court dates or check-ins with a supervision officer



Read and process legal documents, including their bail conditions



Understand and respond during bail hearings, requiring quick thinking and problem-solving

Know what you are agreeing to in court orders



THE CHALLENGE OF BRAIN INJURY IN THE BAIL SYSTEM



CHALLENGES OF CONDITIONS



VARIABLE BRAIN INJURY AWARENESS



I think it [awareness of brain injury the CLS] is still growing. See, a lot of people that maybe aren't that familiar still would classify everybody under mental health. [Laugh] Like and they're not really able to distinguish you know and these are lawyers and judges... They're just, 'That's a mental health person.' I don't think that they realize the difference. (KI - 01, Bail Program Manager)





JUST SIGN AND GET OUT

“I was happy to be signing the paper and getting out of jail ... I guess the only thing I can say [about] it is like it was more happening [to me] than I was experiencing it ... so like detached from the whole going on of it. Because like I said, more times than not, when we're signing the papers, we're just about to be released, so our minds are more focused on seeing them later, right. (P08)



UNCLEAR LANGUAGE

“ [They] give that, that piece of paper. They hand it to people and, nine times out of ten, it just looks like words. It's all written in, you know, it looks like mumbo jumbo. You can't understand it. (P09)



BOILERPLATE CONDITIONS

“

I don't think that it is intentional by the judicial officer. But **what happens is you get into the trap of the standard boiler plate. Well, this [condition] fits so let's just throw that on there.** It's like a template you know. Okay, this, this, this, and this [condition], but you didn't do the critical thinking. The individual walks out the door with their bail paper and **the next thing you know they're back the next morning in bail court because you put some dopey condition on there that's humanly impossible to comply with because** the individual's got mental health problems or **they got a brain injury. They just don't comprehend.** (KI 03, Justice of the Peace)

SELF-REGULATION AND COGNITIVE-COMMUNICATION LIMITATIONS

Many of them [clients with brain injuries] have such mood swings that for them to control their behaviour is much more difficult and so their ability to follow conditions is much more difficult for them... and they can't make good judgments. So you can tell, the judge can tell them a million times you're going to follow these rules and you're going to do this, but they're not going to... They don't have the capacity to make what you and I would do in an executive function and make the good judgement... [Clients with brain injury also] have a harder time remembering, following the conditions. (KI 02, Criminal Defence Lawyer)

LOSING AND FORGETTING CONDITIONS

I cannot tell you how many people lose their bail conditions within the first three hours that they're released and they come to our office the next day oh, I lost my bail paper. So, really they have no idea what their next court date is going to be, they really, you know, they've heard the court, the bail conditions in court but you know I think in court a lot of them just say 'Yes, yes, yes,' just because they know they're getting out and they're not even listening or processing the terms. So that's a big issue--people losing their bail condition, their bail papers and not being aware of what they're actually supposed to be complying with... not even knowing their conditions. (KI 17, Bail Supervision Officer)

(Catch-22 Study)



REMEMBERING APPOINTMENTS

“—

My memory isn't that good at all. A lot [of that] has to do with the head injury as well ... remembering appointments and stuff. ... I never, I couldn't remember. (P18)

“—

[There are] added challenges with people with brain injuries. I had one client very recently and he just, he just didn't even remember. He would come to see me on a Friday and he'd come into the courthouse on Monday and be like 'Okay, I'm here [to report].' And I said, 'I just saw you. You were in on Friday.' And he had no recollection that he had reported. (KI 17, Bail Supervision Officer)

(Catch-22 Study)



SET UP TO FAIL

That special condition that they have on everything that says [do] anything your parole officer says [was particularly challenging]. That one really, really got to me because I'm supposed to [have everything] written down. [...] It's a list of things that is easier for me to understand. If it's not written down, how the heck am I supposed to remember all the stuff [if it's] not even written down? Like it just didn't make sense, especially for someone who has a disability ... It feels like, [...] the world is made for people who are neurotypical, not neurodivergent. And it's like that's what parole is made for--people who have the ability to handle change [...] It's very ableist. So, it made me feel like sometimes things were impossible. And that it was setup for failure. (P04)

”

(Catch-22 Study)



RESPONSIVE APPROACHES



BRAIN INJURY TRAINING AND EDUCATION

“ **I think that the training** both from a law enforcement aspect and for the bench like the Justices of the Peace and judges are **making us more aware of the acquired brain injury set of circumstances and the potential for this individual who is not a bad person to have gotten themselves in a jackpot and now find themselves in the criminal justice system.** I believe that is changing slowly, but there's much more awareness of it. (K1 03, Justice of the Peace) ”

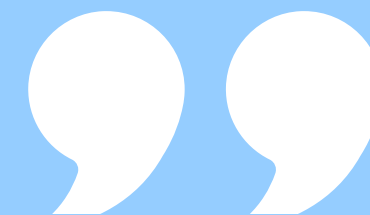
(Catch-22 Study)



DOCUMENTING BRAIN INJURY



Often times I will get from the client a copy of the psychiatrist or doctor's reports indicating how they acquired the brain injury as well as what that means in terms of their functioning. I often think that's important for the judge to have it, to have a better understanding of the person's capacity... Most of the judges are getting better at understanding acquired brain injuries and somewhat fetal alcohol syndrome and you know other conditions to at least mitigate how they see the person's criminal-ness in terms of the offence. So, if I can present that this person has this difficulty and that's what's behind this you know criminal behaviour usually it will result in a lesser sentence or some sort of different sentence that where the judge is really actually trying to help the person... trying to get them to be on the right path and get the right help. (KI 02, Criminal Defence Lawyer)



(Catch-22 Study)

NAVIGATING NEXT STEPS



Somewhere in all those rooms where there's like probation,
there's Duty Counsel, there's the Crown's Office. All these offices.
Maybe one of them can be to just explain how to start rolling with
this ... [like] the first thing I have to do is I have to go sign into a police
station. And then I have a probation officer that I have to phone within
48-hours ... [It would be helpful to have a place in the courthouse to
go] if the client has any questions, somewhere that they can go
with their papers and [say], "I was just too nervous in there. I
didn't catch it. I heard something about a police station and an
address and probation officer? Could you help?" And they help
you work through those papers for a few minutes ... Exactly what
the next steps are. That's right. Exactly what the next steps are. (P01)



(Catch-22 Study)



Brain Injury Bail Court Navigator Program



PROGRAM ACTIVITIES



Virtual court
access



Surety
information



Emotional
support for
families



Ongoing legal
matters



Bail release
planning



Brain injury
screening with
HELPS



Late release
assistance



Compliance
supports (e.g.
reminder calls and
messages)



Connections to
community-based
brain injury
services



Connections to
community-based
resources

CLIENT SUPPORTS

PRIOR TO RELEASE



Screen for BI using HELPS Screening Tool



Support communication between client, counsel, and family



Contact shelters, foodbanks, etc. based on client needs

CLIENT SUPPORTS

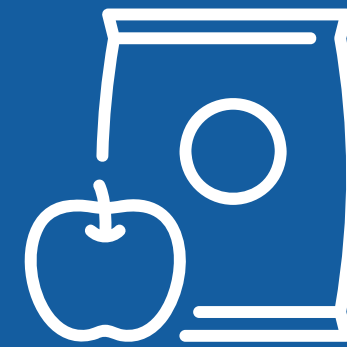
IMMEDIATELY AFTER RELEASE



Court debrief



Educate client on
possible TBI



Provide snack and
water



Offer clothing if
needed



Review bail
conditions

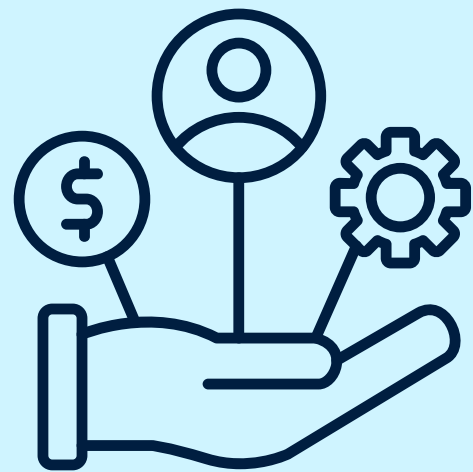


Help individuals get
home

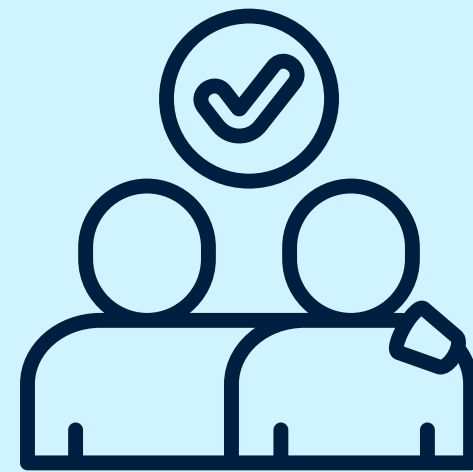


CLIENT SUPPORTS

ONGOING SUPPORTS



Connect
clients with
community
resources



Accompany
clients to court
check-ins and
appointments



Remind clients
about court
dates



Answer
questions
relating to court
processes

CLIENT ENGAGEMENT

September 26th – October 30th 2025



198

Total # of conversations had
in TRBC interview room



34

Total # of women being
provided ongoing support

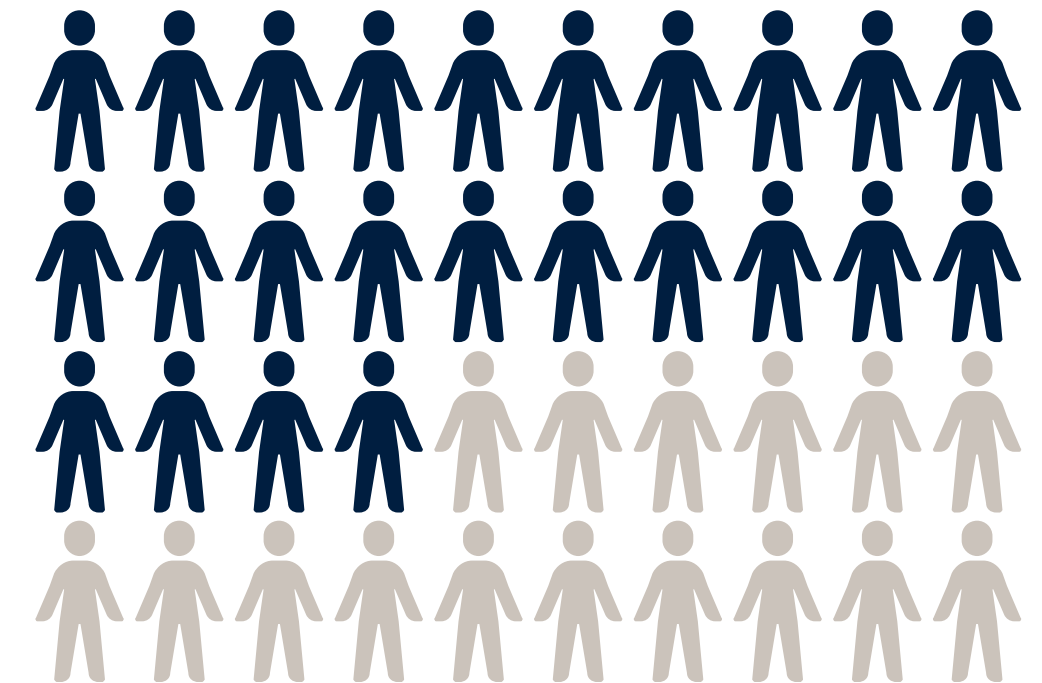


23

Total # of support letters
provided for women

60%

**of women screened
positive for brain
injury**



Evaluation

Key Metrics



Clients successfully obtaining a brain injury diagnosis



Clients who are successfully referred to community-based health services interventions (e.g., mental health, brain injury)



Clients released



Clients with increased understanding of the court process



Clients successfully obtaining ODSP or other long-term financial supports

Qualitative Interviews



- Client Interviews (n = 15)
- Navigator Interviews (n = 2)



Enhancing Equity, Accessibility, and Inclusion in the Bail Process Among Justice-Involved Individuals with Brain Injury

- Conduct needs assessment
- Design and deliver brain injury and communication training
- Evaluate pilot program and disseminate results



Funded by: Law Foundation of Ontario

TRBC KEY INTEREST HOLDERS

- Aboriginal Legal Services
- CMHA
- Cota
- Criminal Lawyers Association
- Fred Victor
- Federal Crown Attorney Office
- John Howard Society Toronto
- Judiciary
- Legal Aid Ontario
- Ministry of Health – Forensics and Justice Unit
- Ministry of the Attorney General – Court Services Division
- Provincial Crown Attorney Office
- Salvation Army
- Toronto Bail Program
- Toronto Police Service



BRAIN INJURY SPECIALISTS

- Constance Coburn, Champlain ABI System Navigator
- Cathy Halovanic, Central ABI System Navigator
- Caitlin Buchel, RSLP, Executive Director, Communication Access to Justice
- Julie Osbelt, Referral Coordinator & ABI Navigator for Toronto Central



QUESTIONS?

Contact Information

Elizabeth Fry Society Toronto General Inquires



justiceandequitylab.ca



(416) 924-3708



info@efrytoronto.org



@elizabethfrytoronto



www.facebook.com/elizabethfrytoronto/

FLORA MATHESON

Scientist

flora.matheson@unityhealth.to

LUCY GUDGEON

Director of Programs

lgudgeon@efrytoronto.org

ARTHUR MCLUHAN

Senior Research Associate

arthur.mcluhan@unityhealth.to

MADISON FORD

Research Coordinator

madison.ford@unityhealth.to

MEGAN RODRIGUES

Bail Court Navigator

mrodrigues@efrytoronto.org

HANNAH LI

Bail Court Navigator

hli@efrytoronto.org

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