

Legal Skills Workbook

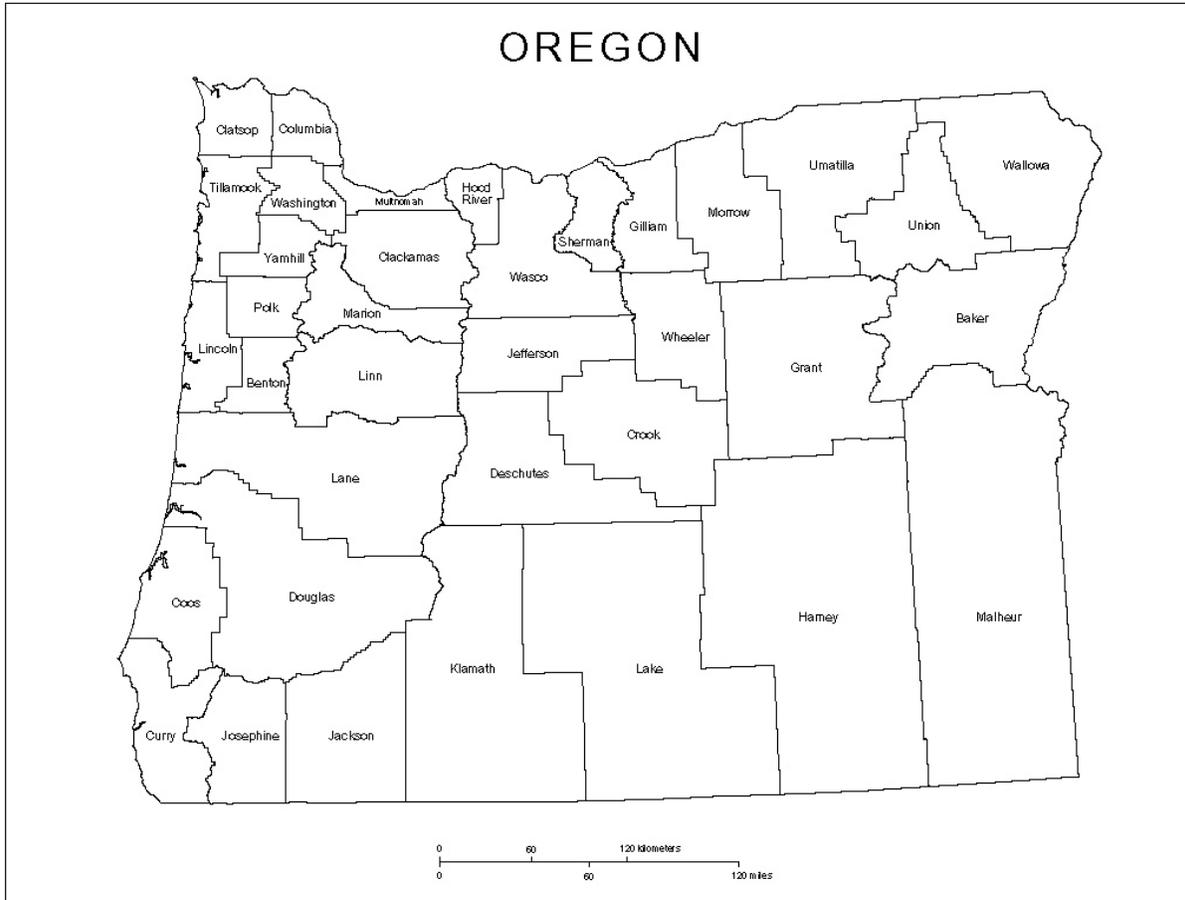


State of Oregon

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Introduction

A judge has signed an order for you to engage in community-based competency restoration after finding you unable to aid and assist your attorney in your defense. You may hear the phrase “incompetent to stand trial.” This means that the judge decided that you are not able to help with your trial, usually after an evaluation by a psychologist or psychiatrist. The Constitution of the United States says that everyone has the right to a fair trial. As long as you are deemed incompetent to stand trial, you are not able to have a fair trial.

There are many reasons a judge may have thought that you were unable to aid and assist in your defense. You may not have been thinking clearly during a hearing or trial. You may have been unable to understand your charges or were unable or unwilling to cooperate with your attorney. You may not have understood what your options were. These are just to name a few. Whatever the reason, opening this workbook is the first step to moving on with your life.

This workbook is designed to help you to become able to aid and assist in your competency evaluation and criminal case, so that you may return to court and continue with your case. The workbook may be used as a resource for you to use with staff or during your independent time.

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Topic One: Why Am I In This Situation?

You are here for competency restoration. What does this mean? First of all, a person must be “competent to stand trial,” “able to aid and assist their attorney,” or “fit to proceed” before they can go to court and resolve their charge(s). These different terms often refer to the same thing. There are certain abilities that are important for people to have in order to be able to aid and assist or be found competent:

Understanding the charge(s), including:

- The formal name of the charge(s)
- What you are accused of doing wrong
- Understanding the seriousness of the charge(s)
- Understanding if each charge is a felony or a misdemeanor
- Appreciating the possible penalties if found guilty

Understanding the court process, including:

- Legal rights as a defendant
- Roles and functions of courtroom personnel
- Nature and purpose of court proceedings
- Available pleas and their significance
- Plea bargaining and the implications
- Different types of trials
- Possible outcomes of a trial
- Possible sentences or punishments

Being able to assist in your defense by being able to:

- Cooperate with your defense attorney
- Communicate in a rational and coherent manner
- Disclose pertinent facts about the alleged offense to your attorney
- Plan a defense strategy productively with your attorney
- Properly appraise the available evidence in the case

- Consider legal options, likely outcomes, and legal strategies
- Potentially testify relevantly
- Consider legal advice and make rational decisions about your case

Exhibiting appropriate behavior, including:

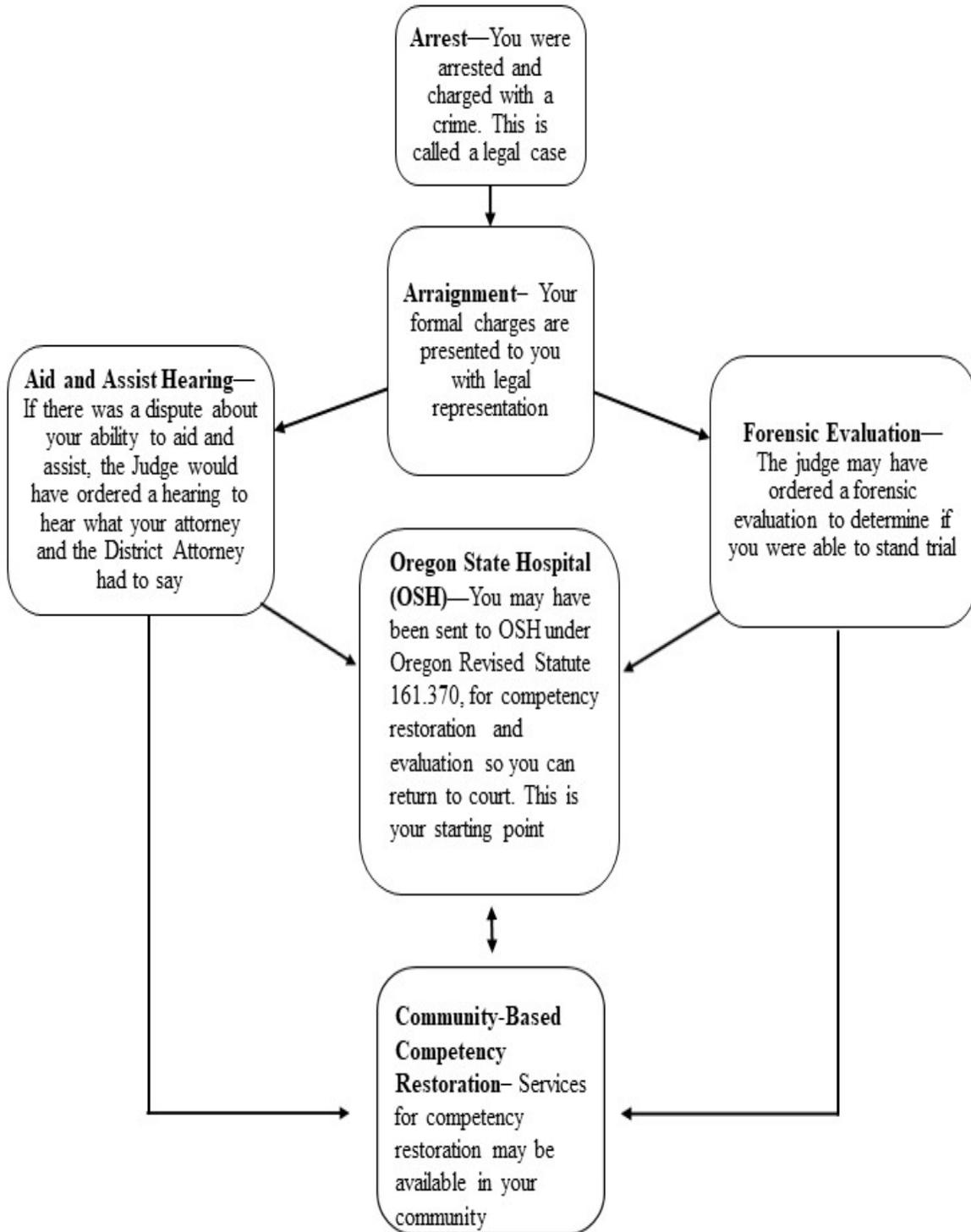
- Demonstrating clinical and behavioral stability
- Participating in treatment
- Following rules
- Cooperating and collaborating with staff
- Interacting in a respectful manner with others
- No aggressive or disruptive behavior
- Proper appearance and respectful behavior in the courtroom

If a person is found not able to stand trial, they are likely to be ordered by a judge to participate in a program to help them become “able” or “competent” or “fit.” When most people first find out that they have been found unable to aid and assist and their case is on hold, they are upset. They often don’t think that they have a problem. They may not know what led to that decision made by the judge who then wrote an order for treatment (also known as competency restoration).

Sometimes people are mad at their attorney, the judge, their family, or just mad at everyone. When people are mad or don’t care, they often do not want to participate in anything. They may not want to even listen to anything anyone has to say.

Sometimes, people are sad or upset about their circumstances. They may be sad for something they lost or upset about the disruption to their life. Sometimes, people experience grief for the loss of family, friends, pets, homes, jobs, and much more. It is natural and understandable that they may be feeling strong, unpleasant emotions when things change in their life.

You may also have many questions that you want answered. “Why am I here?” “How do I move forward?” “Who are all of these people?” These questions are natural. There are many people who can help you through this part of your life, if you are willing to accept the help.



Topic Two: What Now: Addressing Barriers

You may have spent some time in the jail and then in a competency restoration program at the state hospital and are now in a community-based competency restoration program. Or you may have come straight from jail to a community-based competency restoration program. However you got here, the goal is to address those barriers to competency that are in the way.

In general, someone is most likely going to be able to aid and assist if they are able to cooperate with an attorney, understand what happens in court, and participate in their defense. Someone who has a qualifying mental disorder and symptoms that are interfering with these abilities may not be found able.

Barriers to competency include psychotic symptoms, mood symptoms, and cognitive deficits. This does not mean that everyone with mental health symptoms has these barriers. Some of these barriers could present as:

- Psychotic symptoms that impair a person's ability to think rationally about their defense
- A mood disorder that interferes with a person's ability to control emotions related to their case
- Trouble with paying attention or remembering things that would help with their defense

Community-Based Competency Restoration may include:

- Taking prescribed medications
- Engaging in therapy or self-help for mental wellness
- Studying legal skills
- Participating in forensic evaluations

Some basic rights that you have, and that can help you along the way, are:

- You have the right to contact your attorney.
- You have a right to contact Disability Rights Oregon and the Office of Training, Investigations and Safety.
- You have the right to ***ask*** your attorney to be present at your forensic interview (evaluation). The attorney ultimately decides whether or not to be present. If they decide to be present, it can be in person or on the phone.

You also have constitutional rights such as:

- **The Miranda Rights:** You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be appointed for you.

Topic Three: What to Expect in the Forensic Interview

“The Evaluation”

The evaluation is more like an interview than a test. You will be in a room with a psychologist or psychiatrist whom you will not have met before (if this is your first time taking the evaluation). They will ask you questions to get to know you better. Their job is to develop an opinion of whether you are able to aid and assist. The evaluator will continue to ask you questions until they feel they are able to form an opinion.

There are various types of questions that the evaluator may ask you during the evaluation: legal skills questions, mental health questions, and general questions about your background. An evaluator ultimately can ask you any questions they feel are necessary or relevant. Below are some things you will need to know for the evaluation. If you can answer “yes” to all of them, you are in pretty good shape!

Legal Skills Questions:

- Do you know the four plea options? Can you give the definition of each in your own words as well as the outcomes of each (what happens if you enter each plea)?
- Do you know the people of the court and what each person does?
- Do you know what a plea bargain is?
- Do you know what “contempt of court” means?
- Do you know the difference between a bench trial and a jury trial and what happens at each?
- Do you know and understand why you are at OSH instead of jail?
- Do you know your charges and what they mean?
- Do you know if they are felonies or misdemeanors?
- Do you know the maximum sentence for each charge?
- Do you know what your attorney’s name is?
- Do you know what confidentiality is and whom you have it with?

- Do you know how to appropriately communicate with your attorney in the courtroom?

Mental Health Questions:

- Do you know what your diagnosis is and what it means?
- Do you know what medications you are taking and what you are taking them for?
- Can you share about your mental health history and family history of mental health?
- Can you share about your substance use history and family history of substance use?

You may be given some exercises to test your memory, brain functioning, and orientation (Do you know where you are and what the date is?)

The most important part of learning the legal skills is being able to describe them in your own words and not just memorize them without understanding.

Topic Four: Evaluation Results

The circumstances for each defendant are unique, depending on the situation and the time needed to attain or regain competency.

You are most likely to hear one of the following evaluation results: able to aid and assist (“able”) or unable to aid and assist (“not able”). It may take a while before you receive the results of your evaluation. A copy of the report goes to the court, the defense attorney, the district attorney, the community mental health program, the facility that you are living in, or as permitted by law or court order. Ultimately, the judge will decide whether to accept the forensic evaluator’s opinion.

Able- Able means that the evaluator believes that you are now ready to aid and assist your attorney in your defense. If you are found able, it is recommended that you contact your attorney about next steps in your case.

Not able- Not able means that, at the moment, the evaluator believes that you are not ready to aid and assist your attorney in your defense. However, the evaluator believes that you could become able to aid and assist in the future, but that you may need more time or support in order to do so. If you are found not able, you will continue to have periodic evaluations.

Able	➡	Begin working with your attorney to resolve your legal case
Not Able	➡	Continue receiving treatment

You can return to court with mental illness symptoms, as long as they do not interfere with your participation and understanding of what is happening in court.

Topic Five: Know Your Charges

For the forensic interview, you will need to know your charges. During the arraignment, you were appointed an attorney and your formal charges were presented. These are the names of the crimes you have been accused of committing. You will also need to know the maximum amount of time you could face if convicted. If you are unsure of your charges, contact your attorney.

There are two classifications of charges:

- **Felonies** are the more serious classification of charge.
- **Misdemeanors** are not as serious as felonies.
 - **A** being the most serious,
 - **B** being less serious, and
 - **C** being the least serious.
- Additionally, there are unclassified charges described as “Felony U” and “Misdemeanor U.”

They carry the following possible maximum sentences:

Type of Charge	Class of Charge	Maximum Sentence
Felony	A	20 years
	B	10 years
	C	5 years
Misdemeanor	A	1 year
	B	6 months
	C	30 days

Topic Six: Working with Your Attorney

Your attorney was appointed to represent you in a court of law, answer any questions you may have, help you decide how to plead, and work to get you the best outcome possible. Sometimes, it may feel that your attorney and you do not see eye-to-eye. You may feel like your attorney is not doing the best possible job for you and the evaluator may ask you to express your concerns about your attorney during the interview.

Here are some helpful hints to help you work with your attorney to get the best outcome possible:

- Be honest with your attorney. Remember, you only have confidentiality with your attorney. Your attorney can help you best if they know as much information as possible.
- Be prepared to tell your attorney what you know about the events related to your case. This helps your attorney to be able to gather information to help you in your case.
- Ask your attorney what evidence the District Attorney's office has against you.
- Ask your attorney what evidence you have to support your case.
- Evaluate the pros and cons of each of available plea options with your attorney.

Topic Seven: Plea Options and Mental Health Defense Strategies

- ***Not Guilty:*** You are saying you did not do the crime you are accused of doing.
- ***Guilty:*** You are saying you did the crime you are accused of doing.
- ***No Contest:*** You are accepting conviction, but not admitting guilt.
- ***Guilty Except for Insanity (GEI):*** You are saying that you did the crime you are accused of doing and your mental illness was a causal factor in committing the act.

You will need to know and understand what each of these mean. In addition, you will also need to know what the outcomes are for each plea option. The next four topics will go over in detail what each of these means, the pros and cons if you were to plead each one, and the outcomes for each one.

After you are found able to aid and assist, you will return to court and enter a plea before the judge. Understanding these terms will help you in your evaluation and will help you and your attorney work toward the best outcome for you.

Topic Eight: Not Guilty Plea

You are saying you did not do the crime you are accused of doing.

If you enter a plea of **not guilty**, you keep your right to a trial. You have the right to either a jury trial or a bench trial. In most cases, it will be your decision to choose which one you would like.

During the trial, the prosecution has the “burden of proof.” That means they have to prove that you are guilty “beyond a reasonable doubt.” The hospital does not help you to prove your case and does not help the prosecution prove their case.

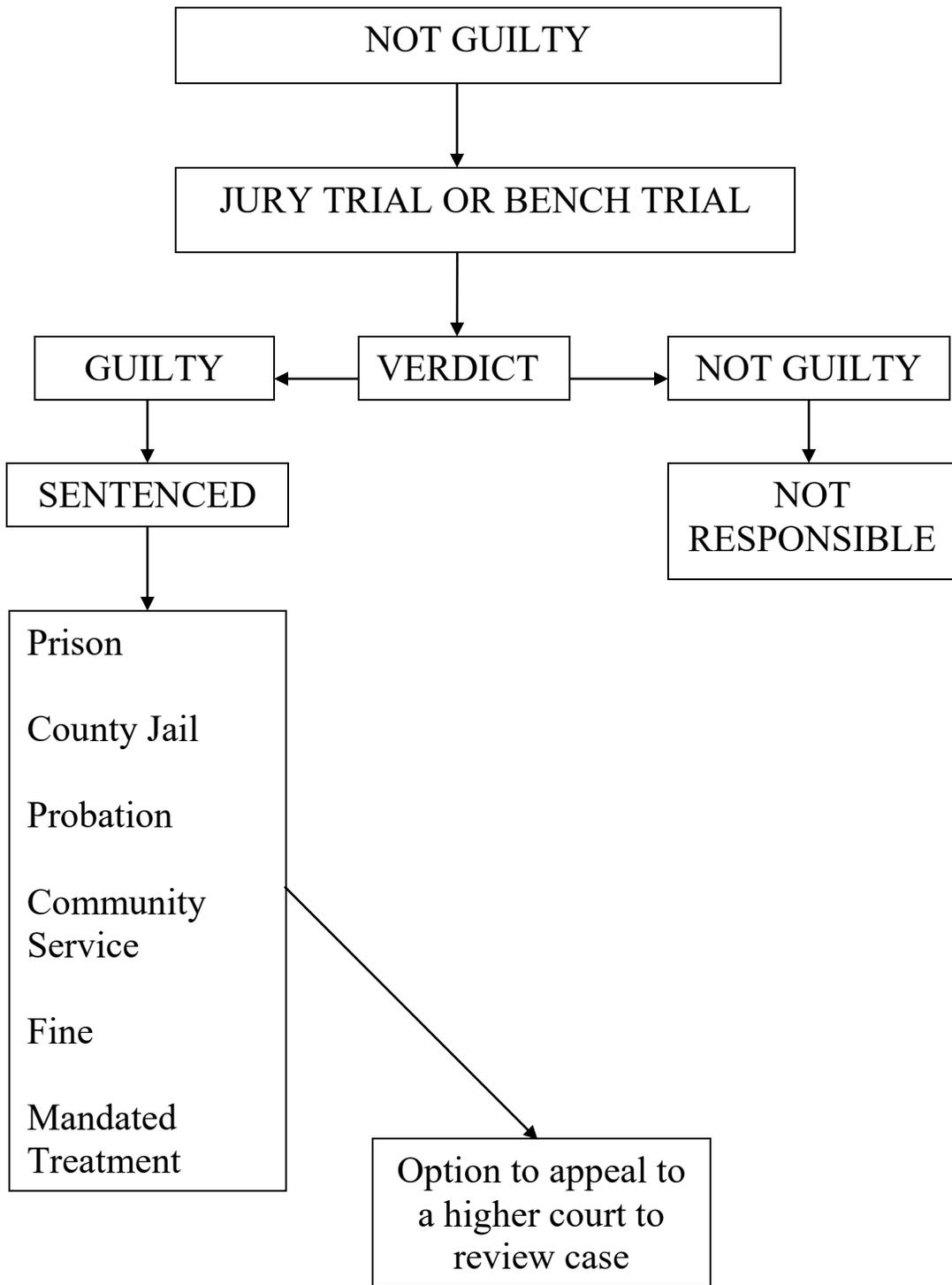
In a jury trial, there are six or twelve people who will decide whether you are guilty or not guilty (the verdict). Six jurors participate in a misdemeanor case and twelve jurors in a felony case.

In a bench trial, the judge listens to testimony given by witnesses, views evidence, and decides whether you are guilty or not guilty. The judge will also give the sentence if you are found guilty.

If you are found not guilty (acquitted), you are found not responsible for that crime.

If you are found guilty (convicted), you are found responsible for that crime and the judge will order one or more of the following sentences:

- Prison and parole
- County jail
- Probation
- Mandated treatment
- Community service
- Fine

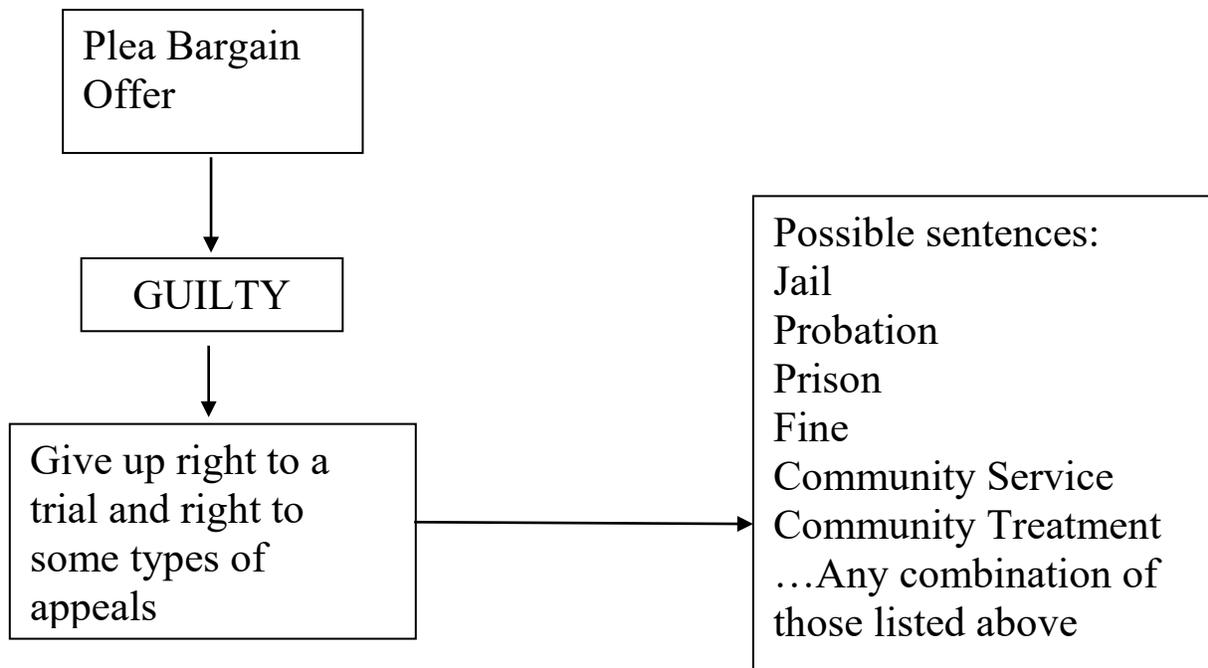


Topic Nine: Guilty Plea

You are saying you did the crime you are accused of doing.

If you choose to enter a plea of **guilty**, you give up your right to a trial and an appeal. You keep the opportunity to ask for a plea bargain, but you must ask for a plea bargain before you enter a plea of guilty. The judge will determine your sentence. They will take into consideration some of the following factors: criminal history including past convictions, severity and type of crime you are pleading guilty to, number of crimes you are pleading guilty to and your ability to make law abiding choices.

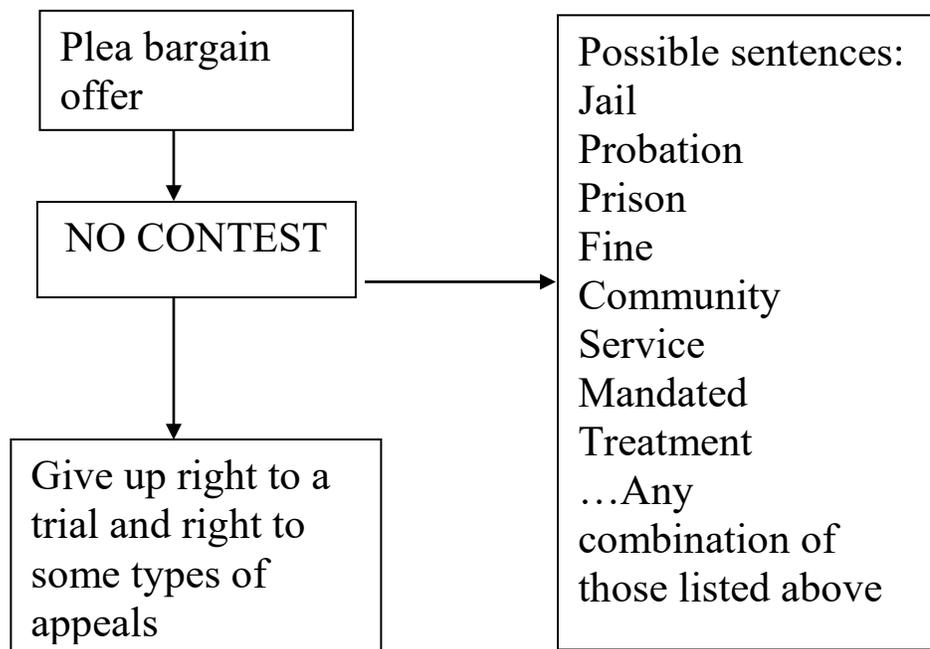
If you plead guilty to a Measure 11 crime or have been convicted of a Measure 11 crime, the judge must follow mandatory minimum sentencing guidelines. That means the judge cannot give a lesser sentence other than what the guidelines say.



Topic Ten: No Contest

You are accepting a conviction, but not admitting guilt.

If you choose to enter a plea of **no contest**, you give up your right to a trial and some types of appeals. You keep the opportunity to ask for a plea bargain but must ask for a plea bargain before you enter a plea of no contest. The judge will determine your sentence. They will take into consideration some of the following factors: criminal history including past convictions, severity and type of crime you are pleading no contest to, number of crimes you are pleading no contest to and the ability to make law abiding choices.



Topic Eleven: Guilty Except for Insanity (GEI) Defense

You are saying that you did the crime you are accused of doing and your mental illness was a causal factor in committing the act.

A mental illness can include depression, anxiety, psychosis, and others. If you think this is an option for you, you are encouraged to speak to your attorney.

People who are charged with felonies who successfully use the GEI defense may be sent to Oregon State Hospital (OSH). If you successfully use the GEI defense you will be ordered to be placed under the supervision/jurisdiction of the Psychiatric Security Review Board (PSRB). Your time under PSRB jurisdiction may not exceed the maximum sentence for your charges served consecutively. You may be granted certain privileges during your time in OSH, such as moving to a less restrictive setting, being able to take on-grounds walks, and being able to participate in groups and events out in the community.

Most people who successfully plead GEI to only misdemeanors may be discharged to the community. This means that a person will be released without needing to serve additional time or be under supervision. The only time someone would return to the hospital with a misdemeanor GEI finding would be if the court determined them to be a danger to others. Once the person is no longer considered a danger to others, they can be discharged to the community.

After you have successfully used the defense of GEI you may at some point be granted conditional release under the supervision of the PSRB. Conditional release means that you could be granted the privilege of living outside of the hospital. You have to follow all of the conditions of release, such as taking your medications, abstaining from drugs and alcohol, participating in urinalysis testing, and participating in treatment.

If you do not follow the conditions of the release, your release may be revoked, and you could be sent back to OSH.

Topic Twelve: Plea Bargaining

Your attorney wants to get you the best deal possible. A plea bargain is a deal between the district attorney and you, with assistance and advice from your attorney. As part of a plea bargain you agree to a guilty type of plea. In exchange you may be offered: reduced charges, reduced number of charges, or a recommendation for a lesser sentence to the judge.

When you return to court, you may begin plea negotiations with your attorney and the district attorney. “Plea negotiations” mean you and your attorney review the evidence in your case and decide how you can get the best outcome.

If negotiations are successful, your attorney and the district attorney will inform the judge of any plea bargains that have been agreed upon, and you will tell the judge how you would like to plead.

You can ask for a plea bargain with a **guilty plea** and a **no contest plea**.

In most cases if you agree to the deal, you give up your right to a trial and your right to some appeals.

In your own words, what is a plea bargain?

What would be the pros (benefits) to agreeing to a plea bargain?

What would be the cons (costs) to agreeing to a plea bargain?

Why might someone agree to a plea bargain?

What questions should you ask your attorney before agreeing to a plea bargain?

—

Topic Thirteen: Appropriate Courtroom Behavior

Showing appropriate courtroom behavior is a good way to show that you are ready to assist your attorney and that you are able to participate in your defense. Below are some examples of appropriate of courtroom behavior and inappropriate courtroom behavior:

Do:

- Shower and put on clean clothes if possible
- Sit quietly in your seat
- Use appropriate language-If you have to speak with your attorney, lean over and whisper in their ear or slide a note over
- Be respectful to all members of the court
- Speak only when it is your turn
- Address the judge as “Your Honor” or “The Honorable Judge [their last name]”

Don’t:

- Stand up or walk around without permission
- Speak without permission
- Yell or use profanity
- Disrespect any member of the courtroom

*It is ok to still have active symptoms of mental illness as long as they do not disrupt the court proceedings.

If you are unable to act appropriately, the judge may hold you in contempt of court, which could add an additional charge and can cause more time to be added to your sentence. Also, the judge may determine that you are again not fit to proceed.

Topic Fourteen: Staying Out of the System

It is beneficial to have strategies to maintain the skills to keep taking care of yourself, mentally, emotionally, and physically. Having a plan in place is a helpful way to start your road to recovery. Below are some tips to help you be successful:

- Attend any mental health groups you may need
- Take your medication as scheduled and as prescribed
- Find a good doctor in the community who can help you with your medical needs as well as your mental health needs
- Know your warning signs to a relapse
- Monitor your symptoms
- Pay attention to possible triggers
- Let others know how they can help you
- Attend support groups
- Make and use a plan for dealing with stressful situations
- Get some exercise
- Eat healthy
- Get plenty of rest
- Avoid drugs and alcohol
- Develop positive social supports
- Seek employment or volunteer in the community

These are just a few of the ways that you can make sure to stay out of the criminal justice system. As every one of us is different, not everything on the list will work for everyone. Find what works for you and keep doing it. Only you know what works for you.