

## What Will Happen If a Custody Order Is Made?

You can appeal a decision by a court to make a custody order within 28 days of the decision being made.

After the initial appeal period against the imposition of a Custody Order, you have no right of appeal against Mentally Impaired Accused Review Board (MIARB) decisions or recommendations.

You will be held at the Governor's pleasure for an indefinite period.

You will be held in a prison or a secure psychiatric hospital. The MIARB will decide your place of custody within 5 days.

Your Custody Order will be reviewed at least once a year by the Mentally Impaired Accused Review Board.

Written submissions can be made to the MIARB before each review about what you would like to be decided. The MIARB has very limited decision making powers and generally the MIARB makes recommendations to the WA Attorney-General who makes recommendation to the WA Governor.

## Dismissing/Renewing Charges

If charges against you have been dismissed in the Magistrates Court, you cannot be charged or tried again for the same offence.

If charges against you have been dismissed in the District or Supreme Court, you may again be formally charged and tried for the offence once you are fit to plead/stand trial.

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## MHLC PUBLICATIONS:

- Administration (Power of Attorney)
- Authorising Electroconvulsive Therapy (ECT) in WA
- Guardianship
- Involuntary Inpatient Orders
- Mental Health Law Centre: What We Do
- Pocket Guide to Communicating With a Member of the Public Who May Be Unwell
- Treatment for Mental Illness (Generally)

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# mental health

LAW CENTRE

**FITNESS TO STAND TRIAL**  
*Criminal Law (Mentally Impaired  
and Accused) Act 1996 (WA)*

## Pleading To a Charge

If you have been charged with a criminal offence and you plead not guilty, your charges will be set down for a trial. The trial is the forum where it will be decided if you are guilty or not guilty. Before the trial can take place, you will need to be fit to stand trial. The word "trial" for the purpose of fitness includes any court proceedings or part of the proceedings about your charge(s), other than a bail or sentencing hearing, and including your plea.

## Presumption That You Are Fit To Stand Trial

The court will presume that you are mentally fit to plead / stand trial.

## Fitness To Stand Trial

If you are mentally unfit to stand trial, evidence will need to be given to the court about your fitness, so the court can decide whether or not the charge against you should proceed.

You may not be mentally fit to plead/stand trial for an offence or crime if you are suffering from a significant mental impairment. A mental impairment includes mental states such as intellectual disability, mental illness, brain damage or senility. The impairment must be so much that you are unable to:

- understand the nature of the charge;
- understand the requirement to plead to the charge or the effect of a plea;
- understand the purpose of the trial;
- understand or exercise the right to challenge the appointment of jurors;
- follow the course of the trial;
- understand the substantial effect of evidence presented by the prosecution in the trial; and/or
- properly defend the charge(s).

## When Can Questions of Fitness Be Raised?

The question of whether or not you can understand the charges, effect of a plea and all the court proceedings may be raised at any time, before or during a trial.

Fitness may be raised by the prosecution, you, your lawyer, the judge or magistrate.

The question can be raised more than once.

## Who Decides Questions of Mental Fitness

The judge or magistrate will decide if you are fit to plead/stand trial, on the balance of probabilities. This means that it is more likely than not that you are fit or unfit to plead/stand trial. In making this decision, the court may inform itself as it sees fit, including by:

- making an order that you are to be examined by a psychiatrist or other expert;
- ordering a report by a psychiatrist or other expert about you, which is submitted to the court;
- adjourning the proceedings and, if there is a jury, discharge the jury; and/or
- making any other order, as the court thinks fit.

The court may provide report(s) about you available to the prosecutor and to you/your lawyer for the purpose of making submissions to the court about the report(s).

## Can The Unfitness Decision Be Appealed?

Either the prosecution or you can appeal against a court's decision that you are/are not mentally fit to plead/stand trial.

## Can The Unfitness Decision Be Appealed?

An involuntary patient is a patient under an involuntary treatment order. Under an involuntary treatment order a person can be given treatment without their informed consent either:

- in the community; or

- by being admitted and detained in hospital. A voluntary patient is any patient who is not an involuntary patient or a mentally impaired accused person under the *Criminal Law (Mentally Impaired Accused Act) 1996* (WA).

## What Happens After You Have Been Found Unfit To Plead/Stand Trial?

If the Magistrate Court, District Court or Supreme Court is satisfied that you will not become fit enough to plead/stand trial within six months of deciding that you are mentally unfit, the Court must dismiss the charge; and

- release you;
- make a Custody Order; or
- adjourn your hearing for up to 6 months from the date that unfitness is found

## Deciding Whether or Not You Have Become Mentally Fit To Stand Trial

If your matter has been adjourned, you will be presumed to remain unfit until the court decides that you remain unfit or are fit to plead/ stand trial. The court must decide to release you or make a custody order within 6 months of the adjournment.

## Who Decides Questions of Mental Fitness

If you have been found unfit in the Magistrates Court, District Court, or Supreme Court, a Custody Order can only be made if your offence is one for which you could have been sentenced to prison.

Furthermore in making a decision to approve/not approve a Custody Order, the court must have regard to the following:

- strength of the evidence against you
- the nature of the alleged offence and
- the circumstances of its commission
- your character and history
- the public interest