A Criminal Justice Survival Guide

Help for people with a mental illness or addiction problems who come into contact with the criminal justice system





www.adferiad.org

Adferiad Recovery is a charitable incorporated organisation registered in England and Wales

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Introduction

Navigating the criminal justice system

This Survival Guide is designed for people with a serious mental illness or addiction problems (or both) who find themselves in trouble with the law or have contact with criminal justice agencies – especially the police – who are intervening because they believe you are unwell or at risk. The guide will cover each aspect of the process and it will explain your rights and responsibilities along the way.

Some matters covered in the guide are specific to mental health or to addiction issues, but we suggest that you check the whole guide to see what applies to your circumstances.

In the guide we look at the different stages people may go through as they move through the criminal justice system, as follows:

Prevention – Police and the law – Sentencing – Prison – Discharge – Recovery

However, it's important to remember that most people who enter the system don't end up in prison, even if they are convicted of an offence. The criminal justice system is not set up to deal with the health needs of people with a mental illness or addiction problems. The agencies you come across will have some experience in this area but it is not their sole function. It is in your interest (as much as you are able) to be clear about your mental health or addiction problems and any treatment and care you need. And don't assume the worst: the experience of Adferiad Members is that the police and other staff in the criminal justice agencies will usually be helpful to you, especially if you explain your problems to them.



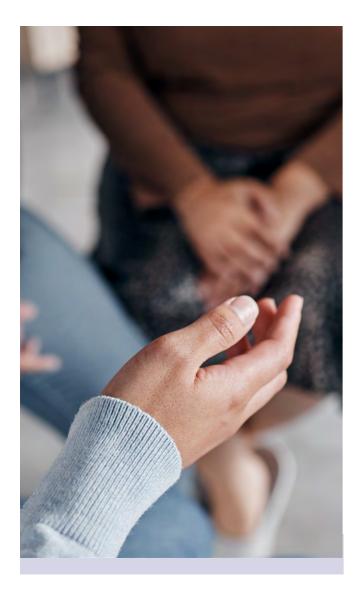


Prevention

Tips to stay safe and avoid legal issues

People with mental illness or addiction problems can often become victims of crime but this guide is mainly designed to help those who come into contact with criminal justice agencies because of behaviour arising from their mental health or addiction problems or because they get into trouble with the law.

Obviously, it is in anyone's interest not to get into difficulty in the first place. Here are some of the ways in which you can avoid this:



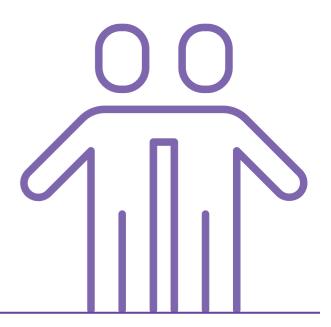
- Getting help with a mental health or addiction problem as soon as possible is the most effective way to avoid getting into trouble with the law. Speak to your GP or other health professional or get help from a friend or family member to do this. And once you are in contact with support services keep that contact going
- Avoid using illegal drugs (or alcohol inappropriately); and avoid gambling and other addictive activities if you have any vulnerability to these. Possession of illegal drugs can itself of course lead to arrest and a criminal conviction; misuse or excessive use of drugs and alcohol can lead to loss of self-control which can lead to criminal behaviour; and addiction can also lead some people to commit offences in pursuit of funds



- Special care should be taken not to become involved in supplying illegal drugs. This is a very serious offence which some people fall into inadvertently, for example by passing on drugs to somebody you know
- If you think you are becoming unwell as a result of mental illness or addiction make sure you tell your doctor/carer/social worker/psychiatrist as soon as possible so that they can assist you in managing this
- Don't stop taking your medication without discussing this with your doctor or psychiatrist
- Avoid places where you may become victimised, bullied or led into trouble by other people (for example areas where people

hang out drinking or using drugs)

- Try to sort out arguments and difficulties calmly. If necessary, ask for help from a neutral party in resolving the problem
- If you are having difficulties managing your money ask for help from a social worker or the Citizen's Advice Bureau



Police and the law

What to know about police procedures and your rights

If you find yourself approached by the police about your actions or behaviour, it is important to co-operate and listen to what they are saying. Use this guide as a way of making sure you know what your rights and responsibilities are.

Most people understand that the police have a general duty to intervene when crime takes place. In this guide we also give details of three specific areas of law which are important in the context of mental illness and addiction.

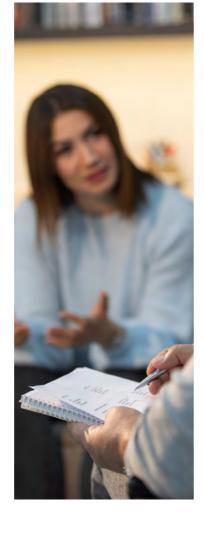
1. Mental Health Act

The Mental Health Act is concerned with serious "mental disorder" but this can also apply to some people with addiction problems where the criteria for intervention are met.

The police have powers under the Mental Health Act to take you to "a place of safety" if they believe you are suffering from a mental disorder, and they are seriously concerned about your health or about the safety of others.

The police have the power to enter your home or another private house, together with a doctor and an approved mental health professional, and take you to a place of safety but, before they can do this, they must obtain a warrant from a magistrate.

If the police and mental health professionals enter your home, it is important to ask to see their authorisation from the magistrate. When you have seen this, try to remember that the reason they are there is because they are concerned about your health, safety and well-being.



It is unlikely you have done anything wrong, but you may be very unwell and not realise that you need some help and assistance.

The police also have powers to take you from a public place to a place of safety (under section 136) if you appear to be behaving strangely and showing signs of being seriously unwell. The police can use this power if they think it is necessary for the person's own interest or for the protection of others. It is worth knowing that this may be exercised in any public place or private place), except a private dwelling (such as private home or own garden).

These police powers have just one purpose – to create the opportunity for you to be examined and assessed by a doctor and an approved mental health professional in order to ensure you have access to the care and treatment you need. You can be held in a "place of safety" (the term used in the Act) for up to 24 hours, (this can be extended to 36 hours if it is felt that it is not possible to assess you properly because of physical health concerns).

Once you are assessed there could be three outcomes:

You are released from the place of safety and allowed to return home. hopefully with the help and support you need

2.

You agree to be admitted to hospital on a voluntary basis

Adferiad's advice:

Try to stay calm and ask that police and other professionals contact your family or carer, and also try to ensure that they take time to explain what is happening to you.

3.

You are compulsorily admitted to hospital under the Mental Health Act*

2. Drug Laws

There are three classes of illegal drugs in UK law, which can result in prosecution leading to fines and/or imprisonment on conviction:

Class A

Includes: cocaine, crack, ecstasy, MDMA, heroin, LSD, methadone, crystal meth, magic mushrooms.

 Maximum sentence: 7 years for possession (life for supplying)

Class B

Includes: cannabis, barbiturates, codeine, ketamine, amphetamine.

 Maximum sentence: 5 years for possession (14 years for supplying)

Class C

Includes: anabolic steroids, khat, BZP, minor tranquillizers and benzodiazepines.

 Maximum sentence: 2 years for possession (14 for supplying)

In 2016, the Psychoactive Substances Act has been created to include the new class of substances. often referred to as 'legal highs'. It defines psychoactive substances as any substances that are capable of producing a psychoactive effect in a person who consumes it: and is not an exempted substance already. Section 2(2) of the Act provides that a substance produces a psychoactive effect in a person if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state.

This act makes it an offence to produce, supply or possess with intent to supply psychoactive substances. It also provides the police with powers to stop and search persons, vehicles and vessels, to enter and search premises (under warrant) and to confiscate these substances. This is another offence that could lead to imprisonment.

But *in practice* many people found in possession of drugs are not prosecuted and where they are the offences are usually dealt with by magistrates' courts; few people convicted of possession receive a prison sentence and most fines are £50 or less. Police officers are often able to use discretion about minor drug offences: if you listen carefully and politely to what they say to you this will give them more confidence in taking an informal approach; they are also more likely to be reassured if you are prepared to stop using drugs and seek treatment if that is needed. Police use a data management and information system called NICHE, where they can signpost you to the relevant partners or charities they work with where they will track your progress and monitor if you have actually attended your appointments. If this is a condition of your bail after leaving custody, please make sure you do attend any appointments made for you with outside organisations.

Note that behaviour and actions arising from misuse of alcohol can also lead to contact with the police – likewise a polite and cooperative response is best.



Adferiad's advice:

Nobody wants to be arrested or charged for drug offences and the best way to avoid this when challenged by the police is to remain calm and listen to what is said – there is more information about the formal process following arrest on the next page. But our strong advice is to see contact with the police (whatever the outcome) as a "wake-up call" to make your own decision to avoid illegal drugs and seek treatment if you need it.



3. Stop and Search

The police have the power to stop and search people if they think they have reasonable grounds for suspicion. The police can stop and search you by either using a police power (suspicion, so your consent is not required), OR alternatively with your consent.

A 'stop' is when an officer stops you and asks you what you are doing, where you are going and what you are carrying. A 'stop and search' can take place if an officer believes that you are carrying drugs/weapons/stolen property, or items that could be used to commit an act of crime/terrorism. It does not mean you are being arrested.

The officer who stops you must give you the reason why you have been stopped, give you their details (including name, police number and station) and a copy of the stop/search form. You can ask that the officer who searches you is the same sex as you.



Adferiad's advice:

Unless you are clear that the police are in breach of the rules it is best to cooperate calmly with a lawful "stop and search".

This will reduce the likelihood of escalation and make it more likely that the police will have confidence to take only informal action even if there is in fact an offence



4. Arrest

The police can arrest you with or without a warrant if they suspect that you have committed an offence. The police have the power to use 'reasonable force' in arresting you and searching you (section 32 PACE). This is a level of force "no more than absolutely necessary" to achieve the arrest. If you are noncompliant or resisting the arrest, you can be committing further offences such as resisting arrest or assault on an emergency worker; this may cause the officers to use a higher degree of force and an additional charge to be added to vour current one. If the police exceed that level of force, they may violate your human rights.

When you're arrested and arrive at the custody, if the police have any concerns or believe you might be in possession of an item which could physically injure anyone (including yourself), the police will search you (under section 54 of PACE). They should explain why it is necessary

to search and need to carry it out with respect and dignity. A search involves the removal of outer clothing, mostly jacket, hat, gloves, and shoes.

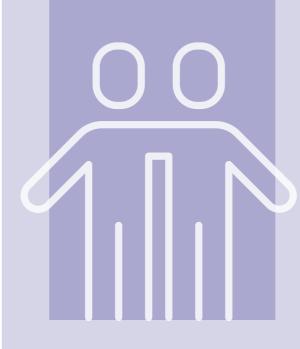
A strip search is a search that involves removal of more than outer clothing, including shoes. PACE Code C Annex A 10 states that a "strip search may take place when only if it is considered necessary to remove an article which a detainee would not be allowed to keep and the officer reasonably considers the detainee might have concealed such an article".

When you are arrested you cannot be locked up indefinitely. The general rule is that you may not be kept in police detention for more than 24 hours without being charged but this can be extended if the appropriate authority* is given.









*Appropriate authority meaning:

1st instance: 12h extension by Superintendent of custody can be applied for. This will be grated if the Superintendent believes the investigation is conducted diligently and expeditiously.

When you stand in front of the custody desk, a Sergeant will ask you a lot of questions (for a risk assessment) about your physical and mental health to ensure you are fit and well enough to be detained.

At this point if you are very unwell (for example experiencing psychosis) the police can ask a police doctor or a mental health professional to examine you to decide whether you are fit to be detained and/ or interviewed. This is the point where the medical examiner can ask for an approved mental health professional to be called so that a psychiatric assessment can take place. If you need to be taken out of the criminal justice process because of your mental ill health, a psychiatrist will normally need to make this decision.

After being arrested you have three basic rights:

1. The right to free and independent legal advice	2. The right to have some informed of arrest – usu relative or f
	•

2nd instance: Magistrates court can extend your custody stay by 36 hours, and then further extend by 24h due to seriousness of the case, bringing the total maximum to 96h.

o one of your ually a friend	3. The right to consult the Codes of Practice (a booklet concerning police powers and procedures)



5. Appropriate Adult

The role of an Appropriate Adult is a mandatory safeguard, which applies to anyone in police custody who is 'vulnerable'. The definition of vulnerability is complex, it includes not only people living with mental illness, learning difficulties and disabilities, but also temporary and situational vulnerability such as grief or brain fog from shock.

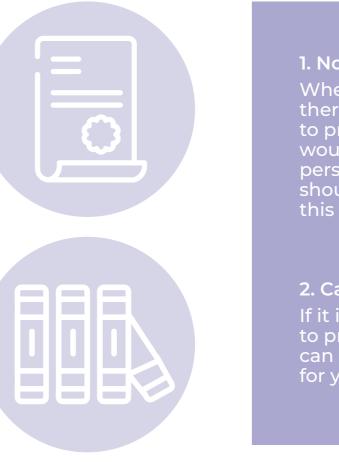
Vulnerable people are particularly prone and affected by the distress and pressures caused by the experience of arrest and police detention, and an 'appropriate adult' must be offered to people who find themselves in such situations. This is a responsible adult who is independent of the police and whose role is to:

- · Look after the detained person's welfare.
- Help them understand what is happening and why.
- Explain police procedures and advise.
- Provide information about rights and ensure that these are protected.
- Facilitate communication with police.

If the Sergeant has any concerns at any time of your stay in custody with regards to risks to participation in custody processes and procedures, they can call for an Appropriate Adult to be present to support and guide you throughout the process inside the custody suite. Please note that a person with serious addiction problems 'may' meet the same criteria for vulnerability and may be offered an Appropriate Adult to support them through the processes.

The police have the right to process you when you have committed a crime, which means they will take your fingerprints, photographs and DNA samples (mouth swab). Please note that they can use reasonable force when obtaining these samples and processing you. When the police interview you, they will caution you, check your understanding of the caution and inform you of all the data protection implications of video recording the interview (audibly and visually). Your Appropriate Adult (if requested/if applicable) will support you in the interview as well as throughout the other processes afterwards, including explaining the outcomes.

There are several possible outcomes when the police have completed their investigation:



1. No further action

Where the police decide that there is insufficient evidence to prosecute or that a warning would be sufficient. The person will be released and should be notified in writing of this decision.

2. Caution

If it isn't in the public interest to prosecute you, the police can give you a formal caution for your conduct.







3. Bail

Where the police will release you to complete enquiries that could not be completed while you were in custody; or to get advice from the Crown Prosecution Service where they will set out conditions of your bail, and if you were to break these, you may be arrested again. Released under investigation – which means the person is not on bail, but the police are still investigating the alleged crime and will inform of the outcome when the investigation concludes.

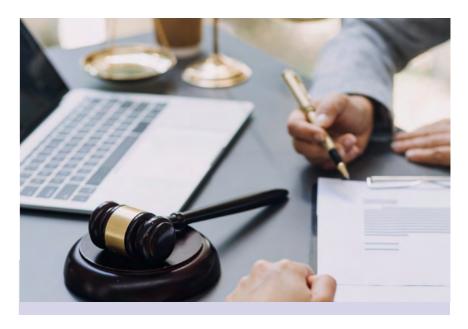
4. Charge / Prosecution

This is where it has been decided that the case needs to go to court. The Government Department responsible for determining the charge and prosecuting criminal cases instigated by the police in England and Wales is the Crown Prosecution Service (CPS). The CPS must "prosecute cases firmly, fairly and effectively when there is sufficient evidence to provide a realistic prospect of a conviction and when it is in the public interest to do so".

5. Out of court disposal

This is a method of resolving investigations for offenders involved in low-level crime and anti-social behaviour. Out of court disposals aim to minimise the risk of individuals being drawn into the formal criminal justice system when there is no public interest to prosecute.





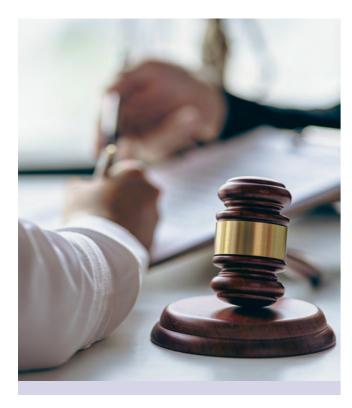


Sentencing

Understanding the sentencing process

If you are summoned or charged by the police and released from custody you should see a solicitor as soon as possible. You may be eligible for Legal Aid if you cannot afford the services of a solicitor. It also depends on factors such as how likely it is that you may win the case.

The Legal Services Commission (LSC) provides advice and legal representation for people facing criminal charges through the Criminal Defence Service (CDS). More information can be found at www.clsdirect. org.uk or on 0845 3454345.



All criminal cases, even the most serious, begin in a magistrates' court. The magistrates listen to the evidence and (in less serious cases) decide whether the accused is guilty or not guilty and, where appropriate, determine the sentence.

More serious criminal matters are referred by the magistrates' court to the Crown Court which deals with both adults and young people. The Crown Court has a judge presiding over trials and a jury consisting of 12 persons randomly selected from a list of all those persons aged 18–70 who are registered as electors.



Remember to attend in plenty of time and to be prepared to wait until your name is called. Dress appropriately and take a pen and paper. Also remember to take any medication you may need with you.

At your first appearance in magistrates' court you will normally be asked to enter your plea of 'guilty' or 'not guilty'. If you plead guilty the court will request a report before passing sentence. If you plead not guilty, a date will be set for your trial.

You may be sent to prison for a period of time (known as being 'remanded in custody'), given bail, ordered to appear in court or admitted to hospital for an

1. First Court Appearance

If you attend court for a criminal offence you may want to bring a friend to support you. Take with you any papers you have about your case. When you arrive tell a court official and your solicitor. Check the notice board as it will show when your case will be heard and where you need to go. assessment. If you are given bail, it may be with conditions. If you have a mental health condition the court may agree a delay in the proceedings until a psychiatric report can be obtained.



2. Sentence

If you are convicted – that is found guilty of the offence(s) - you may be sentenced immediately. Most people are called back to court for sentencing at a later date. During this period you are likely to be asked to see the Probation Service. They will prepare a presentence report. The purpose of this report is to provide an assessment of your needs, the risk you pose to others and your readiness or ability to change your behaviour. The report is designed to assist the court in reaching a decision about how best to sentence you.

Adferiad's advice:

You must comply with the conditions of your sentence otherwise you could risk being returned to court where you may receive a harsher sentence.

If you receive any sentence at court other than a prison sentence, you must find out what the sentence is and what vou must do next. Do not be afraid to ask the usher or the clerk of the court to explain this to you. Your solicitor should not leave court until they have explained to you exactly what has happened to you and what you need to do next.

You may receive a community sentence with a number of conditions attached. This means that you will be under the supervision of the Probation Service in the community and that they will design a programme of work for you to undertake.

The main sentences of a court are:

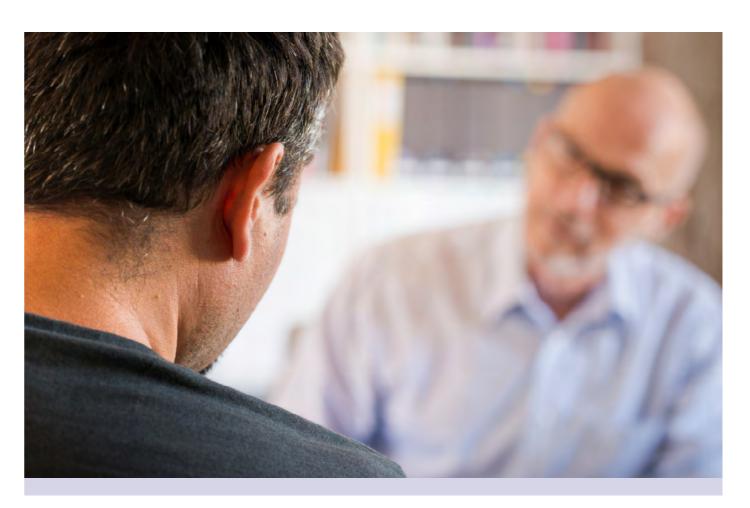
- Custodial sentence (for the most serious offences)
- Suspended sentence
- Community sentences
- Fines
- Discharge
- Compensation

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If a psychiatric report has been obtained recognising that you have a mental health condition, the outcome may be different.

When the magistrates have found someone with a mental illness guilty they may decide to impose:

- A hospital order: this is known as being 'sectioned' and is based on the evidence of two doctors
- A guardianship order: when the court places you under the guardianship of the local authority for the protection of yourself/others
- An absolute discharge: when the court takes no further action against you (but you will have a criminal record)





In Prison

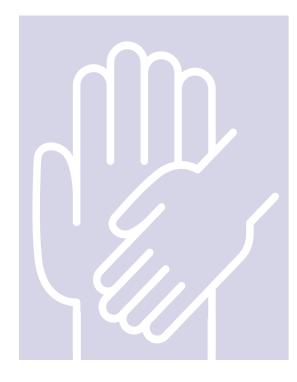
Support for mental health and addiction in prison

Most people who enter the criminal justice system don't end up in prison, even if they are convicted of an offence.

Adferiad believes that no-one with a serious mental illness or addiction problem should be held in prison as this is an inappropriate environment. However, statistics show that a large percentage of prisoners have mental health and/or addiction problems, and many have a serious mental illness or addiction problem. But note that all prisons provide mental health and addiction treatment and support services.

Adferiad's advice:

It is vital that you let the Prison Service know that you have a mental illness or addiction problem and about any medication you need to take. We strongly recommend that you engage as much as possible with treatment and support provided in prison.



On entering prison, prisoners spend a short period being assessed on induction before being allocated their accommodation. Induction usually lasts 1-2 weeks and may include:

- A health assessment that identifies areas of risk
- Suicide prevention/self-harm management
- Assessment for mental health problems including serious mental illness and personality disorder
- Screening and assessment of drug and alcohol misuse with a view to treatment
- Detoxification/maintenance regimes for specific drugs
- Immunisation/vaccination

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Note that all prisoners may be tested for drugs and alcohol randomly or because of a suspicion of use or as part of risk assessment before temporary release or transfer to open prison.

Remember that there is no guarantee that you will go to a prison in Wales – you may end up in England. There are currently no women's prisons in Wales.

If you are feeling very low you can ask to see someone from the listener scheme (a service available in most prisons). This involves talking to a fellow prisoner who has been trained to listen to people in prison who are experiencing distress or who may be particularly vulnerable.



Adferiad's advice:

If you are feeling suicidal, you must let a prison officer know so that they can support you.

Before you enter prison, take steps to ensure you keep your home and let people know where you are.

Adferiad's advice:

If you have concerns about your healthcare or accommodation, or any other part of your life, it is important that you let your offender manager know so that they can assist you with resettlement



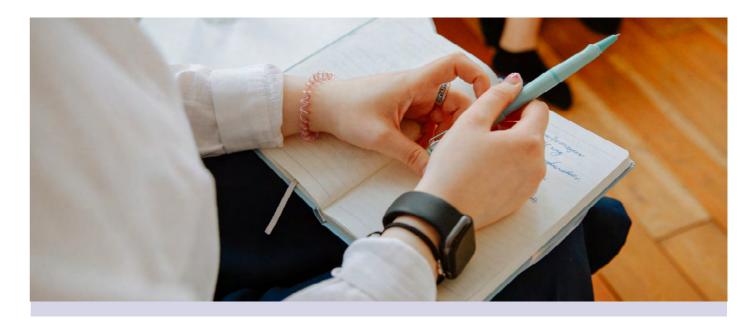
During your time in custody there should be:

- Further assessment and screening on transfer between prisons
- Advice offered on maintaining good health, including mental health
- Discharge and resettlement planning
- Advice on maintaining contact with your family and friends
- Advice on being released on licence (being on licence means that you are still serving a prison sentence but you can live in the community instead of being in prison)
- Prison Mental Health Inreach Teams (MHIRTs) work within the prison setting to provide assessment. care and treatment to those experiencing serious mental illness. They link in with services outside of prison. MHIRTs should assist with:
 - 1. G.P. registration
 - 2. Referral to specialist treatment should you need this

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If you are very unwell in prison you may need to be transferred to a hospital, medium secure unit or a special hospital where you will serve your sentence. It is possible to go back and forth between prison and hospital.

The Probation Service work with people in prisons who are serving their sentences. For example, they may be asked to write a report about you for the Parole Board to help them decide whether or not it is safe to release you and, if you are released, what arrangements need to be in place to stop you reoffending and to keep you and others safe. If you are serving more than 12 months imprisonment you will have an offender manager who has overall responsibility for you during your time within the criminal justice system.







Discharge

Planning ahead for your release

If you think you are coming out of prison without the support you need for your mental illness or addiction problem you must tell prison staff before you leave. They should be able to provide you with support.

The more you can do to plan ahead before discharge, the better.

We advise that while you are still in prison, you check that mental health or addiction support services in prison are in communication with those in the community. If this is the case, you are more likely to receive the right services as soon as possible when you are released.

If you have nowhere to live on release, it is extremely important to engage with housing services before you leave. Make full use of any resettlement services available inside the prison and ask for help from family and friends.

Adferiad's advice:

In the next section you'll find information on care planning. It is a good idea to look at this section before you leave prison so that you can consider what practical steps you need to take before and after your release

If you intend to claim benefits on release, you should do so as soon as possible to avoid delay in receiving benefit.

If you receive a sentence of less than 12 months you will be released directly into the community. You will not have to see an offender management team but you may be subject to a home detention curfew (also know as a 'tag'). This involves having an electronic device attached to your ankle that can show if you have left your home during times when you are not supposed to.



If you receive a sentence of 12 months or more you will come out on what is called a licence. There are different types of licence and some, like a parole licence, depend on the length of your original sentence. Being on licence means that you are still serving a sentence but you can live in the community instead of being in prison.

Being under licence means that you will be under the supervision of the Probation Service. You will have to keep appointments with the offender management team and undertake any programme of work they have designed for you. You will have an offender manager whose job it is to ensure that your sentence plan is carried out. The offender manager has overall responsibility for you, and for ensuring your needs are met.

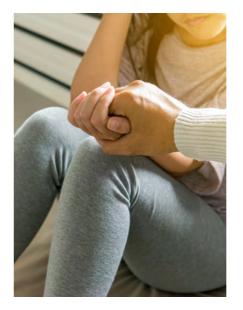
Adferiad's advice:

Do not miss appointments with your offender manager (unless you have a note from your GP). If you do miss appointments you could be taken back to court and you could end up in prison.

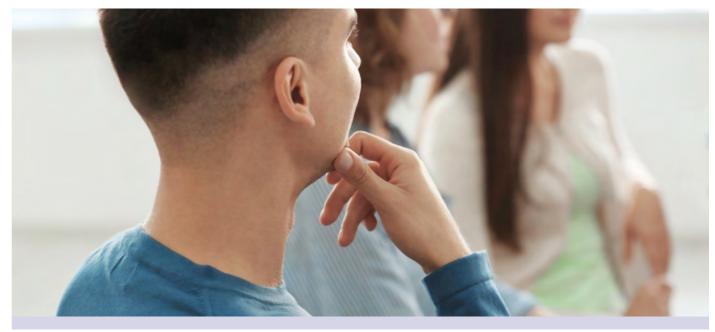
The programme of work designed for you should take account of your mental health needs and it is important that you keep to the programme as it will be designed to help you stay out of trouble in the future.

Adferiad's advice:

It is vital that you are frank with your offender manager about your mental health needs.









Recovery

Pathways to achieving long-term recovery

We believe that a model of support and care aimed at recovery is essential for all people with a mental illness or addiction problem including those who come into contact with the criminal justice system.



1. Empowerment and selfmanagement

Empowerment means exercising rights and responsibilities in making choices about life. Selfmanagement means taking the actions required to lead a life based on those choices.

Within the criminal justice system and within hospital there are of course significant restraints on a person's ability to make choices (especially in prison). However, their recovery still depends on developing their empowerment and self-management.

2. Commitment to progress

Recovery depends on actively taking steps to improve life. It is vital to agree and act upon a step-by-step, goal-focused plan. The key plan for people with serious mental illness is the required care plan under the Care Programme Approach (CPA).

The National Probation Service and the Prison Service are both involved in offender management from the moment a person enters prison to the time they end their sentence in the community under license. Both agencies use the Offender Assessment System (known as OASys) to assess risk and develop a plan to reduce reoffending.

3. A 'Whole Person Approach'



Adferiad's clients have found that recovery depends on the components in the ABOVE diagram.

Useful Contacts

FFOPS – Families & Friends of Prisoners Services (South Wales)

Support and advice for the families and friends of prisoners.

Tel: 01792 458645

Community Legal Advice Directory

This online resource allows people to search for a solicitor specialising in mental health issues.

Web: www.communitylegaladvice. org.uk

Independent Police Complaints Commission (IPCC)

Body that oversees complaints against serving police officers in England and Wales.

Tel: 08453 002002 Web: www.ipcc.gov.uk

NACRO Cymru

Provides various services for exprisoners.

Tel: 01248 354602 Web: www.nacro.org.uk/cymru

Nacro's Resettlement Helpline offers free advice to ex-offenders, serving prisoners, their families and friends.

Tel: 07901 006107

Citizens Advice Bureau

The main UK organisation offering free general and legal advice. Tel: See local directory

Web: www.citizensadvice. org.uk

Criminal Defence Service (CDS)

The CDS provides people who are under police investigation or facing criminal charges with legal advice, assistance and representation.

Tel: 0114 7496 0170 Web: www.legalservices.gov.uk/ criminal or www.clsdirect.org.uk

Crown Prosecution Service (CPS)

Government body responsible for criminal prosecutions in England and Wales.

Dyfed Powys Tel: 01267 242100 Gwent Tel: 01633 261100 North Wales Tel: 01978 346000 South Wales Tel: 02920 803902

Web: www.cps.gov.uk

About Adferiad

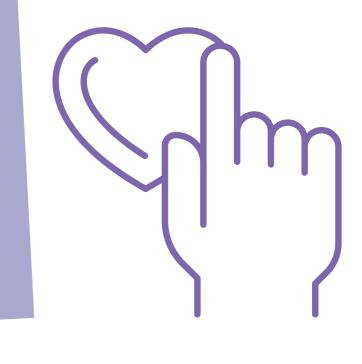
A leading charity providing support for a range of needs

Adferiad is a member-led charity that provides help and support for people with mental health, addiction, and co-occurring and complex needs, to maximise their personal potential, and achieve a better quality of life. Our expert staff and volunteers apply a whole person approach to help people in all areas of their lives so they can live with dignity and as independently as possible. We are rights affirming people within a rights affirming organisation.

Our support includes a range of local and national services for our clients, carers and families; we operate services in all 22 counties of Wales and in Lancashire.

We also provide a national and local voice for our clients and campaign alongside them to reform policy and law, improve services and combat discrimination.

We have collected over 50 years' worth of knowledge and experience in supporting those with complex needs.







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