

SUPPORTING MENTAL HEALTH PATIENTS: UNDERSTANDING THE LEGAL AND FORENSIC SYSTEM

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DISCLOSURES

No conflicts to disclose

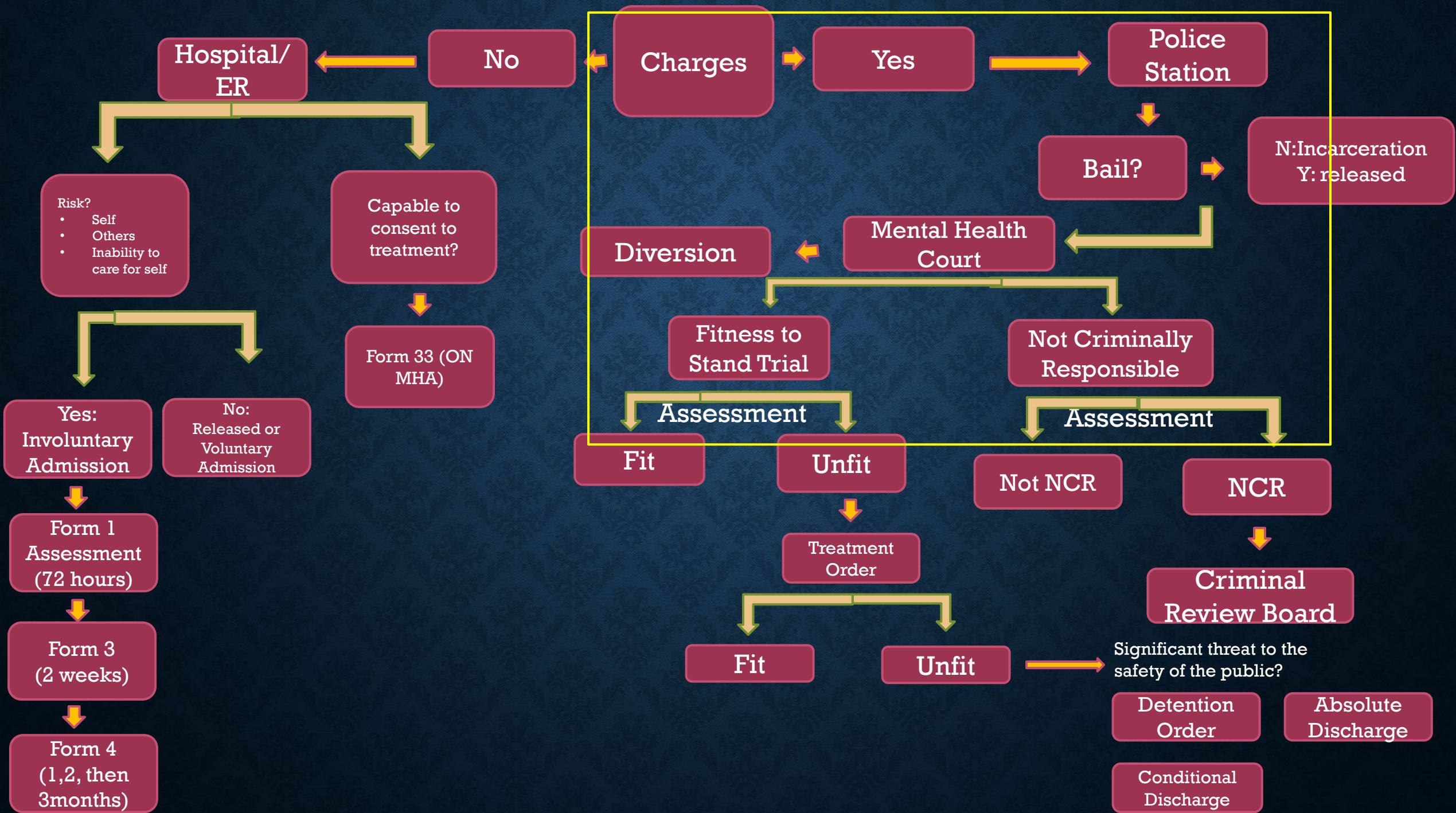
LEARNING OBJECTIVES

1. Summarize mental health law and systems in Canada.
2. Review legal tools for family members and mental health professional to consider when supporting a patient.
3. Discuss considerations for handling mental health law issues in Muslim patients.

Some of the matters discussed during this presentation will be sensitive in nature. If you're feeling overwhelmed please reach out for support.

MR. ALI- PART 1

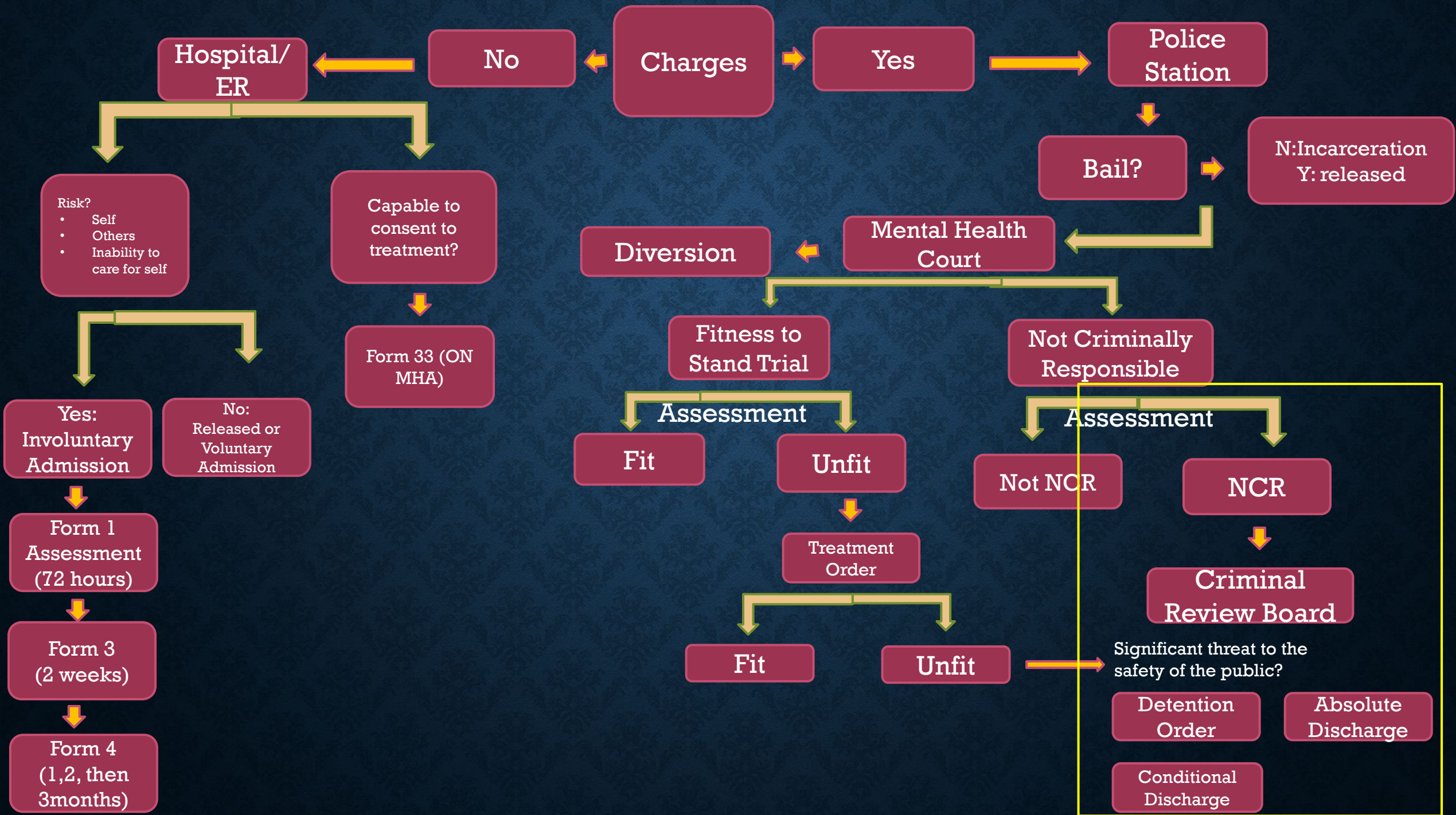
MR. ALI- PART 2



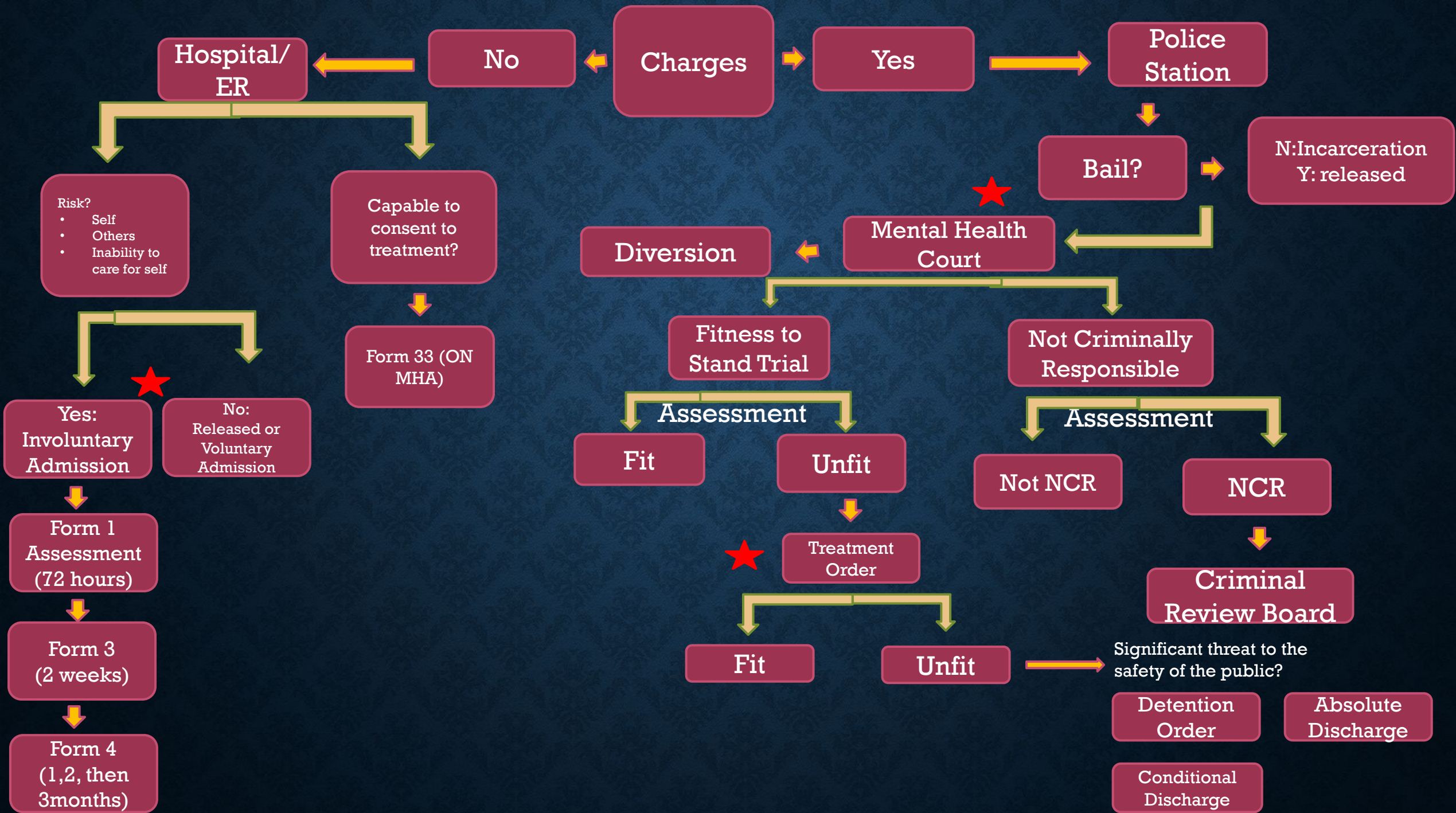
CRIMINAL RESPONSIBILITY

- NCR = Not criminally responsible
- Before 1991- Not guilty by reason of insanity
- After 1991- Not criminally responsible by reason of mental disorder
- "No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong." S. 16 CCC
- Balance of probabilities
- Everyone presumed to be sane unless proven otherwise
- Who can raise the issue:
 - Judge or defence
 - Crown can only after finding of Guilty (so as not to force NCR assessment without consent prior to Guilty verdict)

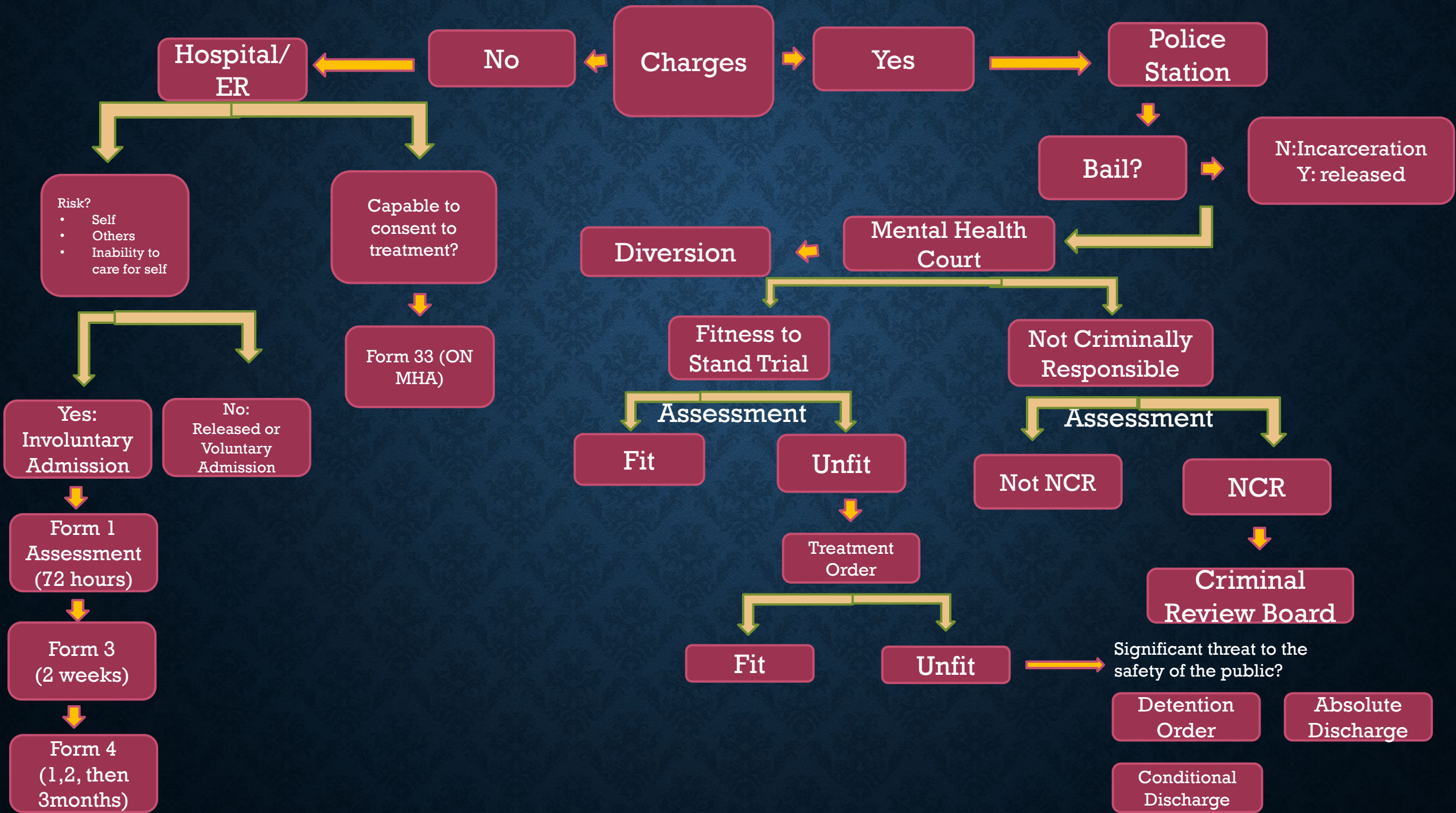
MR. ALI- PART 3



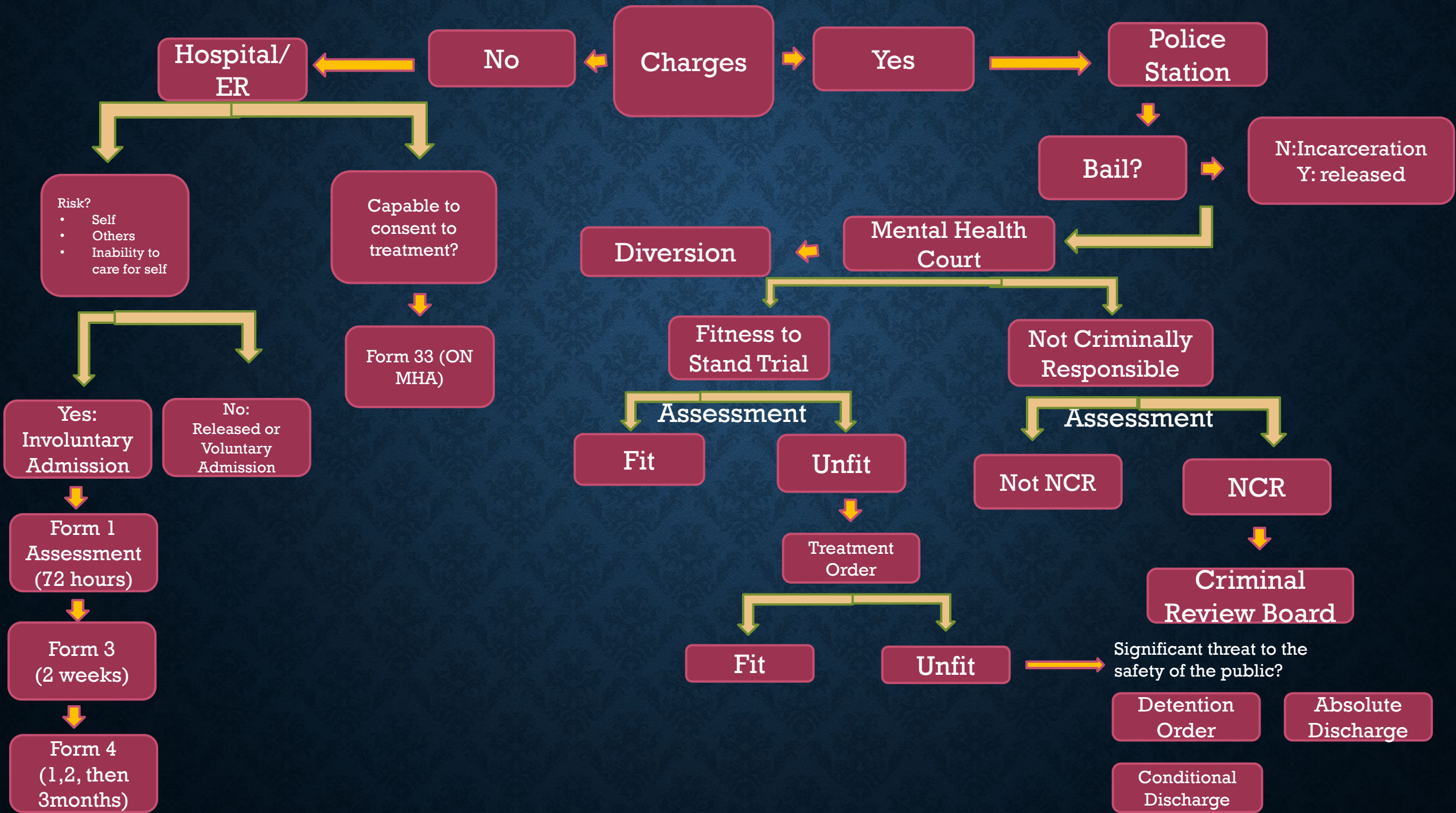
LIMITATIONS OF THESE SYSTEMS



**WHAT FAMILY MEMBERS CAN DO TO SUPPORT
INDIVIDUALS WITH A MENTAL ILLNESS AND
CHARGES**



WHAT COMMUNITY MEMBERS CAN DO TO SUPPORT





Clear Form

To the police officers of Ontario.

Whereas information upon oath has been brought before me, a justice of the peace in and for the province of Ontario

by _____
(print full name of person bringing information)

of _____
(address of person bringing information)

in respect of _____
(print full name or other description of person to be examined)

of _____
(home address, if known)

Part A or Part B must be completed

Part A – Subsection 16 (1)

Information has been brought before me that such person

- has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself;
- has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; or
- has shown or is showing a lack of competence to care for himself or herself.

In addition based upon the information before me I have reasonable cause to believe that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

- serious bodily harm to the person;
- serious bodily harm to another person, or
- serious physical impairment of the person.

**EXAMPLE OF FORM 2
(ON MHA)**

Part B – Subsection 16 (1.1)

Information has been brought before me that such person

- a) has previously received treatment for mental disorder of an ongoing or recurring nature that, when not treated, is of a nature or quality that likely will result in serious bodily harm to the person or to another person or substantial mental or physical deterioration of the person or serious physical impairment of the person; and
- b) has shown clinical improvement as a result of the treatment;

In addition based upon the information before me I have reasonable cause to believe that the person,

- c) is apparently suffering from the same mental disorder as the one for which he or she previously received treatment or from a mental disorder that is similar to the previous one;

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Clear Form

Part B (continued)

d) given the person's history of mental disorder and current mental or physical condition, is likely to

- cause serious bodily harm to himself or herself;
- cause serious bodily harm to another person,
- suffer substantial mental or physical deterioration of the person, or
- suffer serious physical impairment of the person; and

e) is apparently incapable within the meaning of the *Health Care Consent Act*, 1996 of consenting to his or her treatment in a psychiatric facility and the consent of his or her substitute decision-maker has been obtained.

Now therefore, I order you, the said police officers, or any of you, to take the said person in custody forthwith to an appropriate place for examination by a physician.

(date of signature)

(Municipality where order signed)

(signature of Justice of the Peace)

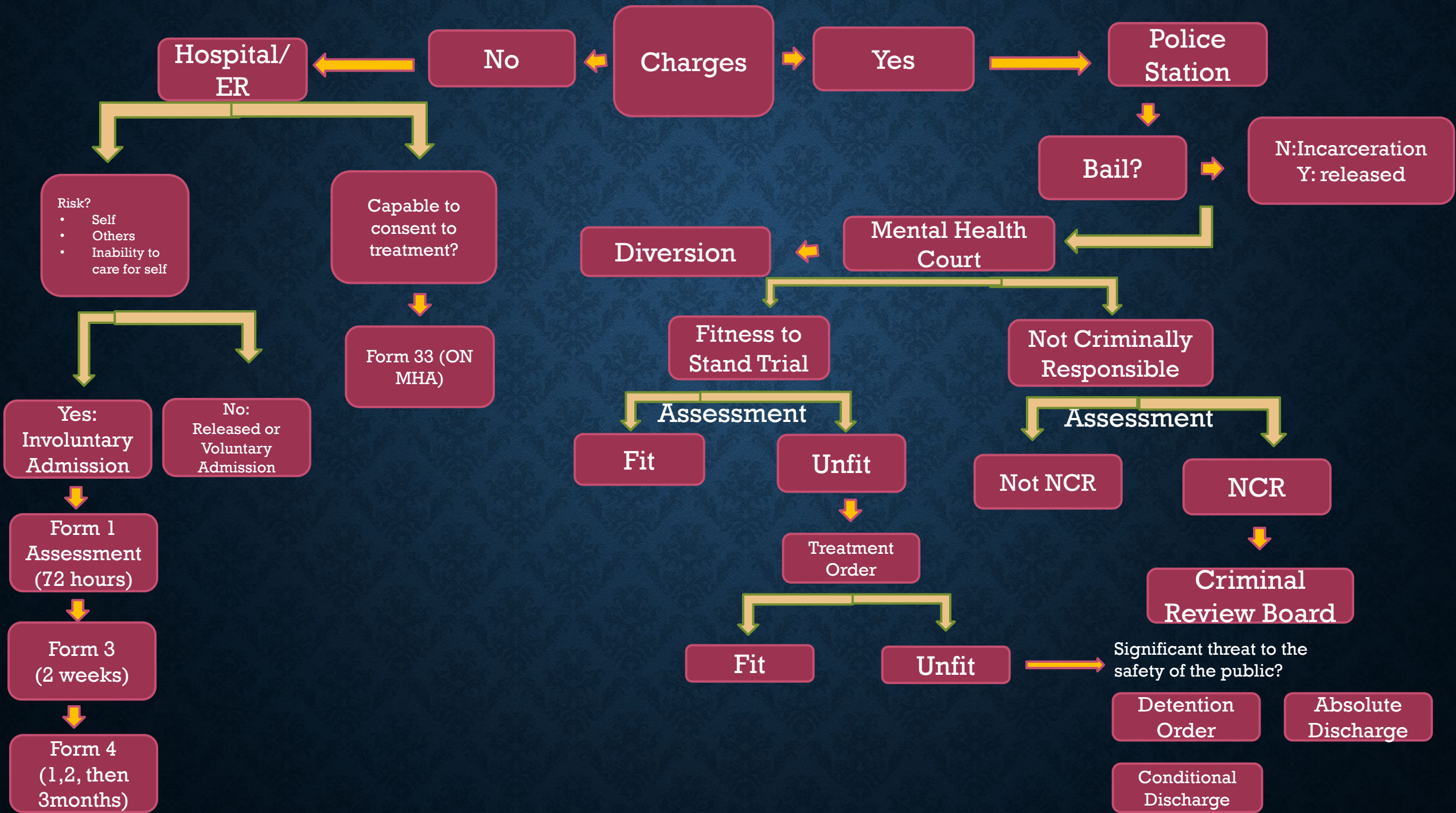
FORM 2

Family or support can present their concerns to a **justice of the peace**

He/she, under section 16 of the MHA, can file a Form 2 if the Box A or Box B criteria are met

Permits for the apprehension and transport of the person, with or without their consent, to a physician for examination

WHAT PHYSICIANS CAN DO TO SUPPORT





Clear Form

Name of physician _____
(print name of physician)

Physician address _____
(address of physician)

Telephone number () _____ Fax number () _____

On _____ I personally examined _____
(date) (print full name of person)

whose address is _____
(home address)

*You may only sign this **Form 1** if you have personally examined the person within the past seven days. In deciding if a Form 1 is appropriate, you must complete **either** Box A (serious harm test) **or** Box B (persons who are incapable of consenting to treatment and meet the specified criteria test) below.*

**Box A – Section 15(1) of the Mental Health Act
Serious Harm Test**

The Past / Present Test *(check one or more)*

I have reasonable cause to believe that the person:

- has threatened or is threatening to cause bodily harm to himself or herself
- has attempted or is attempting to cause bodily harm to himself or herself
- has behaved or is behaving violently towards another person
- has caused or is causing another person to fear bodily harm from him or her; or
- has shown or is showing a lack of competence to care for himself or herself

I base this belief on the following information *(you may, as appropriate in the circumstances, rely on any combination of your own observations and information communicated to you by others.)*

My own observations:

**EXAMPLE
FORM 1
(ON MHA)**

My own observations:

Facts communicated to me by others:

The Future Test (*check one or more*)

I am of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in:

- serious bodily harm to himself or herself,
- serious bodily harm to another person,
- serious physical impairment of himself or herself

Box A – Section 15(1) of the Mental Health Act
Serious Harm Test *(continued)*

I base this opinion on the following information *(you may, as appropriate in the circumstances, rely on any combination of your own observations and information communicated to you by others.)*

My own observations:

Facts communicated by others:

Box B – Section 15(1.1) of the Mental Health Act
Patients who are Incapable of Consenting to Treatment and Meet the Specified Criteria

Note: The patient *must* meet the criteria set out in *each* of the following conditions.

I have reasonable cause to believe that the person:

1. Has previously received treatment for mental disorder of an ongoing or recurring nature that, when not treated, is of a nature or quality that likely will result in one or more of the following: *(please indicate one or more)*

- serious bodily harm to himself or herself,
- serious bodily harm to another person,
- substantial mental or physical deterioration of himself or herself, or
- serious physical impairment of himself or herself;

AND

2. Has shown clinical improvement as a result of the treatment.

AND

I am of the opinion that the person,

3. Is incapable, within the meaning of the *Health Care Consent Act, 1996*, of consenting to his or her treatment in a psychiatric facility and the consent of his or her substitute decision-maker has been obtained;

AND

4. Is apparently suffering from the same mental disorder as the one for which he or she previously received treatment or from a mental disorder that is similar to the previous one;

Clear Form

Box B – Section 15(1.1) of the Mental Health Act
Patients who are Incapable of Consenting to Treatment and Meet the Specified Criteria
(continued)

AND

5. Given the person's history of mental disorder and current mental or physical condition, is likely to: *(choose one or more of the following)*

- cause serious bodily harm to himself or herself, or
- cause serious bodily harm to another person, or
- suffer substantial mental or physical deterioration, or
- suffer serious physical impairment

I base this opinion on the following information *(you may, as appropriate in the circumstances, rely on any combination of your own observations and information communicated to you by others.)*

My own observations:

Facts communicated by others:

I have made careful inquiry into all the facts necessary for me to form my opinion as to the nature and quality of the person's mental disorder. I hereby make application for a psychiatric assessment of the person named.

Today's date

Today's time

Examining physician's signature

(signature of physician)

This form authorizes, for a period of 7 days including the date of signature, the apprehension of the person named and his or her detention in a psychiatric facility for a maximum of 72 hours.

For Use at the Psychiatric Facility

Once the period of detention at the psychiatric facility begins, the attending physician should note the date and time this occurs and must promptly give the person a Form 42.

(Date and time detention commences)

(signature of physician)

(Date and time Form 42 delivered)

(signature of physician)

(Disponible en version française)

FORM 1

- Mandatory psychiatric assessment
- Must have **personally examined** the patient in the last **7 days**
- Must meet the criteria of **Box A or Box B**
- Valid for **7 days**, including the day it is signed
- Person can be detained, restrained, observed, examined for no more than **72 hours**
- Must **give patient a written notice** (Form 42) outlining reason for detention and the right to legal counsel
 - Note the date and time it is given on the Form 1
 - Retain a copy and file it with the Form 1 in the chart
- No right to apply to the Consent and Capacity Board (CCB)

COMMUNITY TREATMENT ORDER (CTO) – FORM 45

- Section 33.1 of the MHA
- Valid for **6 months** unless renewed or terminated sooner
- Renewal is valid for **6 months**
 - Must be completed before expiry or within 1 month of its expiry
- Patient must receive **rights advice**
- Terminated early when:
 - Physician reviews the person's condition and determines they can live in the community without being subject to the order
 - Subject fails to comply with his/her obligations
- Can order for examination under Form 47
- If consent withdrawn, physician must review the person's condition within **72 hours** to decide if the CTO is still required

KEY LEGISLATION IN ONTARIO (FOR REFERENCE)

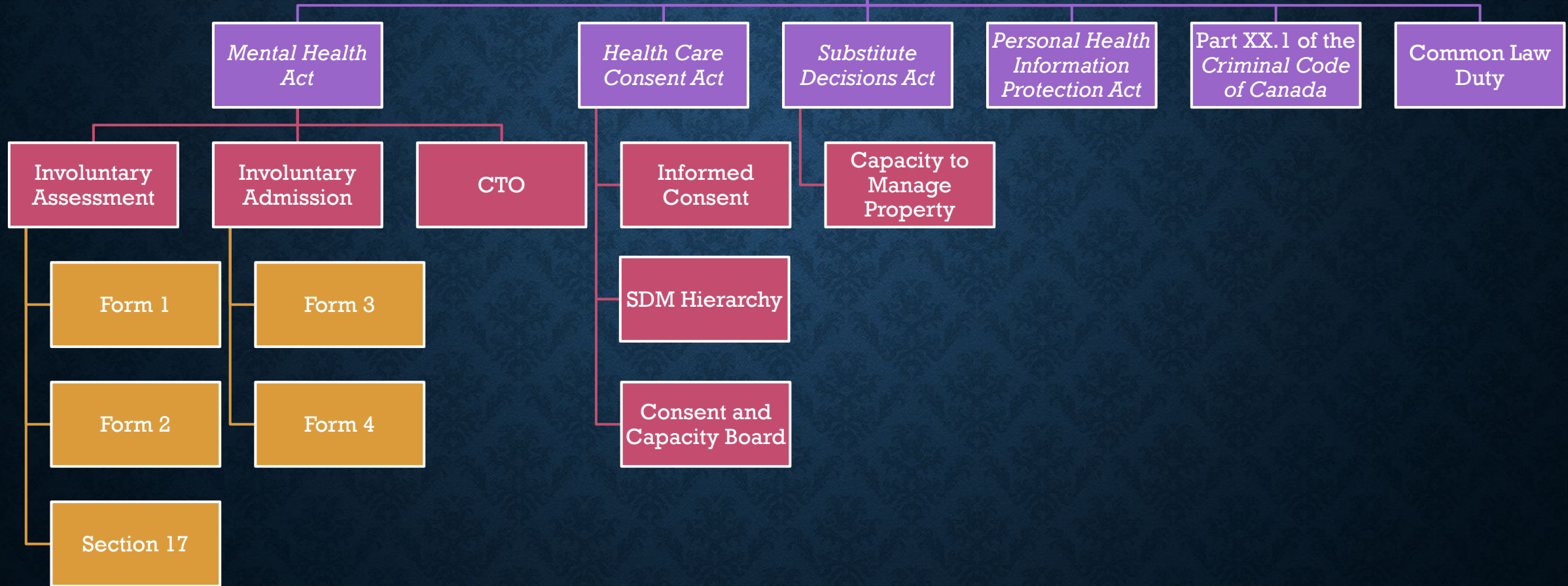


Table 1.

Criteria for involuntary admission and community options, 2016.

Jurisdiction	Definition of mental disorder	Harm criterion	Deterioration as alternative to harm	Need for treatment	Incapable of treatment decision	CTO/leave
British Columbia	Specific	Broad	Yes	Yes	No	Leave
Alberta	Specific	Broad	Yes	No	No	CTO
Saskatchewan	Specific	Broad	Yes	Yes	Yes	CTO
Manitoba	Specific	Broad	Yes	Yes	No	Leave
Ontario	Broad	Bodily	Yes (partial)	No for bodily harm. Yes for deterioration.	No for bodily harm. Yes for deterioration.	CTO & Leave
Quebec	Broad	Bodily	No	No	No	CTO
Nova Scotia	Specific	Broad	Yes	Yes	Yes	CTO
New Brunswick	Specific	Broad	No	No	No	No

**FACTORS TO CONSIDER WITH MUSLIM
INDIVIDUALS IN THE LEGAL/FORENSIC
SYSTEMS**

SUMMARY

ANY QUESTIONS?