



MENTALLY DISORDERED ACCUSED and the **Justice System in British Columbia**

This publication explains how cases involving mentally disordered accused are handled by the justice system. It describes what happens when a person accused of a crime is found either unfit to stand trial or not criminally responsible for an offence, because of a mental disorder. It explains how, in place of sentencing or punishment, disposition decisions (controls placed on the accused) are made and where victims can get information on the status of the case.

When a crime occurs

The police conduct an investigation and may make an arrest based on their findings. The police submit a report to Crown counsel who decides whether or not to approve charges. If charges are approved, the accused is prosecuted.

If the accused's mental health is called into question during the course of a prosecution, the court must evaluate the impact any disorder may have on the delivery of justice.

The accused's mental health can affect the way the case proceeds in the courts in two key ways:

- ❑ the accused may be found unfit to stand trial because of a mental disorder; or
- ❑ during the trial the court may determine that the accused did commit the crime but, because of the accused's mental condition at the time it was committed, the judge or jury may render a verdict of not criminally responsible on account of mental disorder.

When a person accused of a crime is thought to be suffering from a mental disorder, the court and two other agencies act to ensure justice is served:

The B.C. Review Board

The B.C. Review Board is an independent tribunal established under the Criminal Code which determines the extent to which the freedom of a person found not criminally responsible by reason of mental disorder or an unfit person must be restricted. The board usually sits in a panel of three, composed of one lawyer, one psychiatrist, and one person whose professional qualifications are not prescribed (but is usually a social worker). This panel determines if the accused is dangerous and if so, what is the least restrictive disposition (or order) that still protects the public.

Forensic Psychiatric Services Commission (FPSC)

Commission staff are responsible for the assessment, treatment and clinical case management of mentally disordered persons who are in conflict with the law. These services are provided on both an in-patient basis and in the community. The Review Board usually delegates to FPSC many day-to-day decisions involving community access. When this occurs, FPSC balances the needs of individuals in custody with the need to protect society. FPSC addresses the issue of risk posed by all patients, both those in custody and those in the community.

What follows is a description of how a case involving a mentally disordered person is handled by the justice system.

Fitness to stand trial

Every person who comes before the court is presumed to be fit to stand trial and to be free of a mental disorder. A person who is fit to stand trial is capable of:

- ❑ understanding the nature or object of the proceedings;
- ❑ understanding the possible consequences of the proceedings; and
- ❑ communicating with counsel.

If the accused's mental condition prevents him or her from conducting a legal defence, or instructing a lawyer to do so, the trial cannot proceed until his or her mental fitness is restored.

Here are the steps followed if the accused's fitness to stand trial is called into question.

STEP 1 - Court Appearances

If a question concerning the accused's mental health is raised at any point before or during his or her court appearances, a psychiatric assessment may be recommended by the police, the accused's lawyer, corrections personnel or Crown counsel.

STEP 2 - Psychiatric Assessment

If the judge agrees that a psychiatric assessment is necessary, he or she may issue an assessment order. That means, before the trial can proceed, the accused must undergo a psychiatric examination, coordinated by FPSC. After the examination, FPSC provides the court with a report on the accused's mental health.

STEP 3 - Trial of Fitness

The judge or jury must determine if the accused is fit to stand trial. Usually a report from FPSC will help the court when making this determination. If the accused is fit to stand trial, the trial continues. If the court finds that the accused is not fit to stand trial, then the court or the Review Board must decide if the accused should stay in the hospital or reside in the community.

STEP 4 - Disposition

The B.C. Review Board holds a hearing within 45 days* of a verdict to determine if the accused is still unfit. At the hearing, the board examines the circumstances surrounding the crime, the accused's criminal record, psychiatric reports and any other relevant information. If the B.C. Review Board concludes that the accused is fit for trial, it will order his/her return to court to try the issue of fitness. If the Review Board concludes that the accused is still unfit for trial, it will determine what disposition order is appropriate for the accused.

** Note: In a small number of cases where the judge finds the accused unfit to stand trial, he or she may issue an initial disposition order. If so, the B.C. Review Board must hold a public hearing within 90 days.*

There are two types of disposition orders the Review Board may grant: remain in custody at the Forensic Psychiatric Institute (a secure psychiatric hospital located in Port Coquitlam); release on conditional discharge.

A conditional discharge means that the accused is released with certain restrictions placed on his or her freedom. The Review Board or, in some cases, the court may order a conditional discharge after taking into consideration the need to protect the public from dangerous persons, the mental condition of the accused, the re-integration of the accused into society and the other needs of the accused.

STEP 5 - Review Board Annual Review

As circumstances require, but at least every 12 months, the Review Board reassesses the case to determine whether the accused is fit to stand trial. If not, the board revisits the disposition order to determine whether the accused should be held in custody at the Forensic Psychiatric Institute, a secure mental health facility in Port Coquitlam, or released on a conditional discharge.

STEP 6 - Court Inquiry

As circumstances require, but at least once every 24 months, the court must hold an inquiry and be satisfied that the Crown has enough evidence to put the accused on trial. Should the court find there is insufficient evidence, the court shall acquit the accused.

For accused youth, this inquiry must be held annually.

STEP 7 - Return to Court

When the Review Board determines the accused is fit to stand trial, the accused will return to court, and the court will try the issue of fitness and render a verdict. If the court concludes that the accused is fit, the accused will be tried for the offence.

Not Criminally Responsible on account of Mental Disorder

To render a verdict of not criminally responsible on account of mental disorder (NCRMD), the judge or jury must find:

- the accused committed the act (or made the omission that formed the basis of the offence charged), and
- at the time of the act or omission, the accused suffered from a mental disorder which made him or her incapable of appreciating the nature and quality of the act, or of knowing that it was wrong.

Here are the steps followed if the accused is found fit to stand trial, but the issue of his or her mental condition at the time of the offence is raised. It should be noted that often there is no trial; rather, the accused consents to an NCRMD verdict on agreed facts.

STEP 1 - Court Appearance

If the accused is fit to stand trial, the case proceeds before the court. The accused may plead guilty or not guilty, or he or she may raise the mental disorder defence (section 16) – NCRMD.

STEP 2 - Trial

If the case proceeds to trial and the Crown proves that the accused did the act underlying the offence, the accused may raise the mental disorder defence – NCRMD. If the judge or jury determine that the accused did not commit the offence, he or she is acquitted and released.

STEP 3 - Verdict

If the judge or jury determines that the accused did commit the offence, the judge will usually issue an assessment order. That means the accused must undergo a psychiatric examination, coordinated by FPSC. After the examination, the FPSC provides the court with a report on the accused's mental health.

After reviewing all the evidence at the trial, including any reports prepared by FPSC, the Court will render a verdict; guilty, not guilty or ‘not criminally responsible on account of mental disorder.’

STEP 4 - Disposition

Within 45 days,** the B.C. Review Board holds a public hearing to assess how much of a threat the accused poses to society. At the hearing, the board examines the accused’s criminal record, psychiatric reports and any other relevant information.

***Note: In a small number of cases where the accused is found not criminally responsible on account of mental disorder, the judge may issue an initial disposition order. If so, the B.C. Review Board must hold a public hearing within 90 days.*

Based on the evidence presented at the hearing, the board issues a disposition order. There are three possible dispositions:

- (a) absolute discharge;
- (b) conditional discharge; or
- (c) detention in a psychiatric hospital

The last two dispositions may restrict an accused’s liberties.

STEP 5 - Annual Review by B.C. Review Board

As circumstances require it, but at least once every 12 months, the Review Board reassesses cases where the accused is either released on conditional discharge or detained in a psychiatric hospital [(b) or (c) above]. The purpose of the annual review is to determine whether the threat posed by the mentally disordered accused has changed and whether the restrictions on the accused’s liberties should be modified.

Common Questions about Mentally Disordered Accused

How does the B.C. Review Board reach its decision?

The Review Board conducts hearings that are usually open to the public and makes its decision based on a number of factors, including the accused’s criminal record, psychiatric reports and evidence from witnesses.

Generally, three parties are involved in the Review Board process:

- the accused, usually with a lawyer;*
- a representative of the hospital; and
- a lawyer acting as agent for the Attorney General of British Columbia.

**Note: The Review Board can appoint counsel to assist the accused where the accused does not have counsel.*

Witnesses may be called to testify by any of these parties or by the board itself. As well, others may be asked to provide information by any of these parties or by the board. Victims may ask to address the board or submit their victim impact statement for the board’s consideration. The length of Review Board hearings vary, but they generally last two to two-and-a-half hours.

What type of restrictions can the B.C. Review Board order in the case of a conditional discharge?

Conditions of release may include 24-hour supervision, treatment, counselling and rehabilitation, prohibition of drug and alcohol consumption, prohibition on the possession of firearms or other weapons,

no contact with specified individuals, e.g. victims, and restrictions on travel within and/or outside his or her community of residence. There may also be a requirement that the accused report to a community clinic or other community resource deemed appropriate by FPSC.

What happens if the conditions are disobeyed?

FPSC can direct a person’s return to the Forensic Psychiatric Institute. If a person refuses, or in other circumstances where a serious breach occurs, a person may be arrested without warrant. The court will then determine whether a return to FPI is warranted. A breach may trigger a review of the case by the Review Board.

Can a victim testify at the Review Board hearing or submit a victim impact statement for the Review Board’s consideration?

If the Review Board considers it relevant, the victim or victims may testify at the Review Board hearing, or they may submit a victim impact statement for the board’s consideration. These requests must be forwarded to the Review Board two weeks prior to the hearing. Often the Attorney General’s representative will coordinate/facilitate a victim’s input at the hearing.

How do victims find out the date and location so they can attend the Review Board hearing?

If, at the time of the trial, the victim has indicated – usually in writing to Crown counsel – that she or he would like to be notified of the date and location of the Review Board hearing, Crown counsel will arrange for notification. Otherwise, victims may make inquiries about the hearing to the Review Board itself.

Will the victim be informed of the Review Board's decision?

The Review Board notifies the parties of all decisions. If the accused is released on conditional discharge, the Review Board also notifies the police of its decision. The police, in turn, enter the conditions on a police data base (CPIC). If a conditional discharge is granted, the Forensic Psychiatric Services Commission or the police may decide, based on psychiatric evaluations and other information, to notify the community when the accused is released.

Can I inquire about patient information?

The orders of the Review Board, their terms and reasons, are public record. Furthermore, members of the public who attend hearings will be privy to medical and psychiatric information about the accused which is discussed during the course of the hearing by the participants to the review, but the accused's medical files and psychiatric reports are confidential documents. Sometimes there are compelling circumstances which warrant the release of limited information, i.e. notifying victims of an accused's release date. These decisions are made on an individual basis and are subject to the *Freedom of Information and Protection of Privacy Act*.

Can I request the status of a case?

Victims, witnesses and members of the public who wish to be kept informed of the status of a case as it goes from the court to the Review Board, or from one Review Board hearing to another Review Board hearing, can direct inquires to:

- The B.C. Review Board
1203 – 865 Hornby Street
Vancouver, B.C. V6Z 2G3
Phone: (604) 660-8789
Fax: (604) 660-8809
- The Victim Services Agency in the community who initially helped the victim;
- The Crown counsel office at the trial location:
and/or
- The Crown counsel office which has been designated to coordinate all Review Board cases:

Crown Counsel – Review Board
The Port Coquitlam Court House, Unit C
2620 Mary Hill Road
Port Coquitlam, B.C. V3C 3B2
Phone: (604) 927-2156
Fax: (604) 927-2262

Who can I contact for more information on Forensic Psychiatric Services Commission?

Adults: Forensic Psychiatric Services Commission
70 Colony Farm Rd.
Port Coquitlam, B.C. V3C 5X9
Phone: (604) 524-7700 Fax: (604) 524-7905

Youth: Ministry of Children and Family Development
Forensic Psychiatric Services
3405 Willingdon Ave.
Burnaby, B.C. V5G 3H4
Phone: (604) 660-5788 Fax: (604) 660-1109

The Adult Forensic Community Services Clinics can be found at the following locations:

Kamloops Adult Outpatient Clinic – Forensic Services
Clinic Administrator
#5 Tudor Village, 1315 Summit Drive
Kamloops, BC V2C 5R9
Phone: (250) 828-4661 Fax: (250) 371-3894

Kelowna Adult Outpatient Clinic – Forensic Services
255 Lawrence Avenue
Kelowna, BC V1Y 6L2
Phone: (250) 763-1331 Fax: (250) 763-1483

Nanaimo Adult Forensic Clinic
Clinic Administrator
#101 - 190 Wallace Street,
Nanaimo, BC V9R 5B1
Phone: (250) 741-5733 Fax: (250) 741-5740

Prince George Adult Forensic Clinic
Clinic Administrator
2nd Fl, 1584-7th Ave,
Prince George, BC V2L 3P4
Phone: (250) 565-7077 Fax: (250) 565-7076

Surrey-Fraser Adult Forensic Clinic
Clinic Administrator
12033 - 92A Avenue,
Surrey, B.C. V3V 4B8
Phone: (604) 586-4048 Fax: (604) 586-4095

Vancouver Adult Forensic Services,
Clinic Administrator
#300 - 307 W. Broadway,
Vancouver, B.C. V5Y 1P8
Phone: (604) 660-6604 Fax: (604) 660-6625

Victoria Adult Forensic Services
Clinic Administrator
2840 Nanaimo Street,
Victoria, B.C. V8T 4W9
Phone: (250) 387-1465 Fax: (250) 356-2145

What happens to youth who are found “not criminally responsible on account of mental disorder”?

The Ministry of Children and Family Development, Youth Court Services, has facilities and community services in regions throughout B.C. to assess and treat mentally disordered youth in conflict with the law.

Who assesses accused youth?

The Inpatient Assessment Unit, located near the Burnaby Youth Custody Centre, serves as a forensic psychiatric assessment facility for youth ordered by the court for an in-custody assessment.

Regional, community-based clinics in Victoria, Nanaimo, Burnaby, Prince George and Kamloops offer out-patient assessments to accused or convicted youth in the community. Other communities are served through travelling clinics.

The services offered by the In-patient Assessment Unit include:

- assessment and treatment of accused youth and adolescents in the community who are mentally disordered;
- consultation and support services to health professionals and community services providers; and
- assessment and consultation services through travelling clinics.

Who is responsible for administering the accused youth’s treatment?

Youth Court Services provides assessment and treatment services on both an in-patient and on a community basis to Youth Court and to young persons in conflict with the law.

Youth Court Services also provides specialized youth treatment programs for sex offenders, violent offenders and offenders with a diagnosis of post-traumatic stress disorder related to family violence.

Where are accused youth treated?

When treatment cannot be offered in the community by Youth Court Services, the Maples Adolescent Centre is a designated provincial mental health facility which provides residential treatment. It is also the primary care facility for accused youth found “not criminally responsible on account of mental disorder” who need in-patient treatment.

The centre also helps with the management of adolescents in the community through the development of long-term community care plans that address parental, lifestyle, education and community issues.

The B.C. Youth Forensic Clinics can be found at the following locations:

Victoria Outpatient Clinic
Youth Forensic Psychiatric Services
946 Meares Street, Victoria, B.C. V8V 3J4
Phone: (250) 387-2830 Fax: (250) 387-3217

Youth Forensic Psychiatric Services
3405 Willingdon Avenue, Burnaby, B.C. V5G 3H4
Phone: (604) 660-5788 Fax: (604) 660-1109

The Maples Adolescent Treatment Centre
3405 Willingdon Avenue, Burnaby, B.C. V5G 3H4
Phone: (604) 660-5800 Fax: (604) 660-5814

In-Patient Assessment Unit
3405 Willingdon Avenue, Burnaby, B.C. V5G 3H4
Phone: (604) 660-5870 Fax: (604) 660-5661

Burnaby Youth Custody Centre
3655 Willingdon Avenue, Burnaby, B.C. V5G 3X1
Phone: (604) 660-5986 Fax: (604) 660-5994

Kamloops Youth Forensic Outpatient Clinic
#8 - 1315 Summit Drive
Tudor Village, Kamloops, B.C. V2C 5R9
Phone: (250) 828-4940 Fax: (250) 828-4946

Prince George Youth Forensic Outpatient Clinic
1594 - 7th Avenue, Prince George, B.C. V2L 3P4
Phone: (250) 565-7115 Fax: (250) 565-7119

Nanaimo Youth Forensic Outpatient Clinic
201 - 190 Wallace Street, Nanaimo, B.C. V9A 5B1
Phone: (250) 741-5734 Fax: (250) 741-5725