



CRIMINAL JUSTICE BRANCH, MINISTRY OF JUSTICE
CROWN COUNSEL POLICY MANUAL

ARCS/ORCS FILE NUMBER: 58300-00	EFFECTIVE DATE: July 11, 2014	POLICY CODE: NCR 1
SUBJECT: NCRMD (Not Criminally Responsible on account of Mental Disorder) – High-Risk Accused Designations – Applications under section 672.64 of the <i>Criminal Code</i>		CROSS-REFERENCE:

POLICY

A priority of the Criminal Justice Branch is to protect the community from High-Risk Accused persons who have been found not criminally responsible on account of mental disorder (NCRMD). The protection of the public is the paramount concern of the Branch.

In appropriate cases, a “High-Risk Accused” designation should be sought under section 672.64 of the NCRMD provisions of the *Criminal Code*. The designation results in potentially more secure and longer periods of detention in hospital (see Discussion).

All Crown Counsel are responsible for identifying cases for potential “High-Risk Accused” applications, commencing with charge assessment and continuing throughout the prosecution process.

Applications

A “High-Risk Accused” designation should be sought where there is a reasonable likelihood the court will be satisfied on evidence that the legal requirements of section 672.64 are met and that the public will not otherwise be adequately protected by the regular NCRMD dispositions provided in section 672.54 (a) to (c).

When Crown Counsel has identified a file in which a designation should be sought, they should refer it to their Regional or Deputy Regional Crown Counsel before proceeding with an application. The following process should be followed:

- Crown Counsel identifying a potential application should review the file, ensure it is complete, and forward it, along with an explanation of the basis for their view that a “High-Risk Accused” designation should be sought, to their Regional or Deputy Regional Crown Counsel (see Discussion);
- Crown Counsel should advise their Administrative Crown Counsel of the referral to the Regional or Deputy Regional Crown Counsel;

- **In deciding whether to make an application, the Regional or Deputy Regional Crown Counsel should consult with the Branch Resource Crown Counsel on NCRMD matters as to whether, on the facts of the case, a High-Risk Accused designation would be necessary and appropriate to protect the public;**
- **The Regional or Deputy Regional Crown Counsel will make a decision on whether to proceed with an application, having regard to the statutory requirements of sections 672.64(1) and (2) and the need to protect the public;**
- **The Regional or Deputy Regional Crown Counsel should advise the Administrative Crown Counsel and the referring Crown Counsel of their decision;**
- **The Regional or Deputy Regional Crown Counsel should provide a brief of the case and their decision to the Assistant Deputy Attorney General.**

Reviews of High-Risk Accused Designations

An accused, who is found to be a High-Risk Accused, will continue to have the High-Risk designation and continue to be detained in a hospital until the designation is revoked by a superior court. The Review Board may refer the accused back to the superior court for a review of the High-Risk Accused designation and the court, upon holding a hearing, may revoke the designation.

A review will be conducted by the Supreme Court of British Columbia at the location where the High-Risk Accused designation was originally made and a Crown Counsel at the prosecuting location will be responsible for appearing in court. When a review is scheduled, the matter should be referred to the Regional or Deputy Regional Crown Counsel in the Region who will, in consultation with the Branch Resource Crown Counsel on NCRMD matters, make a decision on the position to be taken by the Branch.

DISCUSSION

Consequences of the High-Risk Accused Designation

If a court finds an accused to be a High-Risk Accused, it shall make a disposition under paragraph 672.54(c) that the accused be detained in custody in a hospital. Under section 672.64(3), a High-Risk Accused may not be absent from the hospital unless:

- **it is appropriate, in the opinion of the person in charge of the hospital, for the accused to be absent from the hospital, for medical reasons or for any purpose that is necessary for treatment, if the accused is escorted by a person who is authorized by the person in charge of the hospital; and**

- a structured plan has been prepared to address any risk related to the accused's absence and as a result, that absence will not present an undue risk to the public.

The significance of an order of detention made in relation to a High-Risk Accused, in contradistinction to ordinary detention made pursuant to section 672.54(c), is that the High-Risk Accused designation dictates strict confinement, whereas the ordinary detention order may be tailored by the Review Board to provide a wide range of possible liberties (e.g. access to the community) albeit only upon the approval of the Hospital Director and based upon risk assessment evidence.

Also, the period for reviewing a disposition of a High-Risk Accused may be extended for up to three years. Currently, NCRMD dispositions are subject to mandatory reviews under section 672.81. In general, after making or reviewing a disposition, other than an absolute discharge, the Review Board must hold a subsequent hearing to review that disposition every twelve months (section 672.81(1)). The time for holding a subsequent hearing may be extended for up to twenty-four months in either of the following two ways:

- with the accused's consent under section 672.81 (1.1), which provides that the Review Board may extend the time for holding a subsequent hearing where the accused is represented by counsel and both the accused and the Attorney General consent, or
- without the accused's consent under section 672.81 (1.2), which provides that the Review Board may extend the time where the accused has been found not criminally responsible for a serious personal injury offence and it is satisfied that the condition of the accused is not likely to improve and that detention remains necessary for the period of the extension.

For the new category of High-Risk Accused, section 672.81 is amended to permit an extension of the mandatory review for up to thirty-six months in the same two ways under new sections 672.81 (1.31) and 672.81 (1.32).

Contents of the Report to Crown Counsel

Before referring a file to their Regional or Deputy Regional Crown Counsel, the referring Crown Counsel should ensure it contains the following information:

- A summary of the history and circumstances of the offence on which the potential application is based;
- An outline of all admissible, relevant past conduct;
- All available information about the mental status of the accused and possible treatment options, including any expert reports;
- Copies of all relevant documentation, such as Victim Impact Statements (VIS), criminal record, information about any other outstanding charges, and a copy of the Information or Indictment; and
- An explanation for the basis for their view that the accused may be eligible for a "High-Risk Accused" designation.