

Accused of a **Crime?**

Mental Health and the
Criminal Justice Process



**Public Legal Education
and Information Service
of New Brunswick**

Public Legal Education and Information Service of New Brunswick (PLEIS-NB) is a non-profit organization. Its goal is to provide New Brunswickers with information about the law. PLEIS-NB receives funding and in-kind support from the Department of Justice Canada; the New Brunswick Law Foundation and the New Brunswick Office of the Attorney General.

We wish to thank our partners for this project, Addiction and Mental Health Services, and the Department of Justice and Consumer Affairs, for supporting the creation of this booklet. We also want to acknowledge those who reviewed and commented on drafts, including: representatives from the Criminal Review Board; Public Prosecutions Branch, New Brunswick Office of the Attorney General; New Brunswick Legal Aid Services Commission; and representatives from Community Mental Health Centres around the province.

Produced collaboratively by



Public Legal Education
and Information Service
of New Brunswick



P.O. Box 6000 Fredericton,
New Brunswick E3B 5H1

Tel: 506-453-5369
Fax: 506-462-5193
Email: pleisnb@web.ca

www.legal-info-legale.nb.ca

Addiction, Mental Health and
Primary Health Care Services

HSBC Place -2nd floor
520 King Street PO Box 5100
Fredericton NB E3B 5G8

Introduction

When a person accused of a criminal offence has mental health issues, the court process can be long and complicated. There may be delays to decide if the accused person's mental health issues make it difficult for the person to understand or participate in his or her defence. People often become frustrated with these delays and the number of steps involved.

This booklet explains the following:

- Why these steps are an important part of the criminal justice process.
- How the criminal justice process takes into account the mental health of a person charged with a crime (an **accused person**).
- How and why a judge decides that an accused person is **"unfit to stand trial"**.
- How and why a judge decides that an accused person is **"not criminally responsible on account of a mental disorder"**.
- How judges and a board called the **Review Board** make decisions about accused persons who have mental health issues.

This booklet provides only general information about mental health and the criminal justice process. Anyone needing specific advice on his or her own legal position should consult a lawyer.

Glossary

Definitions for terms in **bold text** are located in the Glossary on page 10.

Mental Health and the Criminal Justice Process

Why is mental health important in the criminal justice process?

Every accused person has the right to present a defence in court. To present a defence, the accused person must have the mental ability to understand and participate in the **court proceedings**. When an accused person has mental health issues that limit his or her ability to present a defence, the judge may decide that the person is **“unfit to stand trial”**.

Even when an accused person is fit to stand trial, the person’s mental health at the time of the crime may affect the verdict. To be guilty of the crime, the accused person must have been able to understand the nature of his or her actions and understand that these actions were wrong. If the judge or jury decides that the person committed the crime but did not understand the nature of his or her actions and that they were wrong, the verdict will be **“not criminally responsible on account of a mental disorder”**. This is commonly referred to as “NCR”.

Is an accused person with a diagnosed mental disorder always unfit to stand trial?

No. An accused person who has been diagnosed with a mental disorder may be fit to stand trial. An accused person would only be unfit to stand trial if the mental disorder affects his or her ability to understand the court proceedings or communicate with a lawyer at the time of the trial.

Fitness to Stand Trial

How is the question of fitness to stand trial raised?

The accused person, his or her lawyer, the Crown prosecutor, or the judge may bring forward this concern at any time before or during the trial.

How does the judge decide if an accused person is unfit to stand trial?

The judge considers whether there is evidence that the accused person:

- does not understand the nature of the court proceedings;
- does not understand what could happen at the end of a trial; or
- cannot give useful instructions to a lawyer.

The judge may request a **psychiatric assessment** before deciding whether the accused person is unfit to stand trial. The judge would then make an **assessment order**. The judge does not decide whether the accused person has a mental illness.

Who does the psychiatric assessment of the accused person?

It is done by a doctor. It can be done in the community, at a hospital, at a **psychiatric facility** or at a jail.

What happens if the judge decides that the accused person is fit to stand trial?

The trial would begin or continue.

What happens if the judge decides that the accused person is unfit to stand trial?

The trial could not go ahead. This does not mean that the accused person will be free to go home. He or she may be kept in a hospital. The **Review Board** would

hold a **disposition hearing** to make a decision about what should happen to the person. The Review Board's decision is called a **disposition** or a **disposition order**.

The disposition hearing usually takes place within 45 days of the judge's decision that the accused person is unfit to stand trial. However, a judge may extend the time for the disposition hearing to up to 90 days.

Note: The trial could go ahead later if the accused person becomes fit to stand trial.

What is the Review Board?

The **Review Board** is a body created under the *Criminal Code of Canada* to make or review the "conditions" imposed on a person who is unfit to stand trial or is not criminally responsible on account of a mental disorder.

Conditions are the rules which set out what that person must do or not do.

Review Board members are appointed by the provincial government. There must be at least five members. The chairperson must be a judge, a retired judge or a person qualified to be a judge. At least one member must be a licensed psychiatrist.

What are the responsibilities of the Review Board?

The Review Board is responsible for deciding if the accused person is fit to stand trial and telling the Court its decision. It also decides what is needed to protect the public from the accused person. The Review Board decides if the accused person should be kept in a hospital or released and what conditions he or she must follow.

If the Review Board decides the accused person is permanently unfit and no danger to the public, it may recommend an end to the judicial process (which is called a **stay of proceedings**).

The Review Board monitors the status of the accused person. At least once each year the Review Board must hold a hearing and decide whether the accused person is fit to stand trial. If psychiatric reports show that the accused person has become fit to stand trial, the Review Board will order the person to return to court so that the court proceedings can continue.

What happens if the accused person continues to be unfit to stand trial?

The judge must hold an inquiry (which is like a hearing). The purpose of the inquiry is to decide if there is still enough evidence to put the accused person on trial. The inquiry must happen two years after the original decision that the accused person was unfit to stand trial. If there is not enough evidence, then the judge will **acquit** the accused person. If there is still enough evidence, then the accused person will remain under the control of the Review Board. A judge will consider the evidence again every two years for as long as the person remains unfit to stand trial.

What happens if the Review Board eventually decides that the accused person is fit to stand trial?

A judge will hear the evidence about the accused person's mental health. If the judge agrees that the accused person is fit to stand trial, the court proceedings can begin or continue.

At the trial, the accused person (or the accused person's lawyer) will be able to question the evidence and offer a defence which may include arguing that the accused person is not criminally responsible on account of a mental disorder.

Not Criminally Responsible (NCR)

Will the judge consider the accused person's mental health as a defence to a crime?

Yes, the judge (or jury, if it is a jury trial) will consider the mental health of the accused person at the time of the crime. The accused person can argue that he or she is "not criminally responsible on account of a mental disorder". This is often called the "mental disorder defence". This defence is included in the *Criminal Code of Canada*.

If the accused person argues this defence, the judge may order the accused person to have a psychiatric examination. This examination may show that the person's actions at the time of the crime were affected by a mental disorder. The judge or jury would consider this report, along with all of the other evidence, when deciding on the verdict. They can decide on one of three verdicts:

- guilty,
- not guilty, or
- not criminally responsible on account of a mental disorder.

A verdict of not criminally responsible on account of a mental disorder means the judge or jury concluded that the accused person did commit the crime but did not understand the nature of his or her actions and did not understand that these actions were wrong at the time of the crime.

If an accused person was unfit to stand trial but later becomes fit and goes to trial, will he or she automatically receive a verdict of not criminally responsible on account of a mental disorder?

No. Fitness to stand trial is separate from the question of whether the person is not criminally responsible on account of a mental disorder. It is possible that an accused person who was unfit to stand trial and then became fit to stand trial will not receive a verdict of not criminally responsible on account of a mental disorder. It is also possible that an accused person who has always been fit to stand trial will receive a verdict of not criminally responsible on account of a mental disorder.

What happens to an accused person when the verdict is not criminally responsible on account of a mental disorder?

The Review Board will decide the care and conditions required for the accused person. This decision is called a "disposition" or "disposition order".

Although the judge does not sentence a person who receives the verdict of not criminally responsible on account of a mental disorder, the judge may hold a disposition hearing and make an initial disposition order that lasts until the Review Board makes a disposition order. This can take up to 90 days from the date of the verdict.

What kinds of disposition orders can the Review Board make?

The Review Board can make the following three kinds of disposition orders:

- It can order that the accused person be kept in a **psychiatric facility**.
- It can order a **conditional discharge**.
- It can order an **absolute discharge**.

The Review Board will choose the disposition that is appropriate for the accused person. It will consider psychiatric assessments and other reports from mental health professionals, the nature of the crime that the accused person has been charged with, the accused person's criminal history, and the need for protection of the public.

The Review Board can choose these dispositions in any order. It does not necessarily start with detaining the person, then moving to a conditional discharge and then an absolute discharge.

What kinds of conditions can the Review Board set as part of a conditional discharge?

When the Review Board orders a conditional discharge, it sets conditions or rules about what the accused person is allowed to do. For example, the Review Board can order that the accused person must:

- live in a particular place;
- keep the peace and be of good behaviour;
- attend a community mental health centre to be seen by a psychiatrist and other mental health professionals;
- not use illegal drugs;
- not drink alcohol;
- not have a gun or another weapon;
- not visit certain places (schools or parks, for example);
- not travel outside of the community; and
- not have direct or indirect contact with the victim of the crime.

How often will the Review Board make a new disposition order?

If the Review Board orders that the accused person be detained in a psychiatric facility or orders a conditional discharge, the Review Board must hold a disposition hearing every year to reconsider the disposition order. It can do this more often if it is in the best interests of the accused person and for public safety to do so.

To decide on a new disposition order, the Review Board considers the accused person's mental health, his or her need for treatment, and whether he or she is a threat to others. The new disposition order will take into account any changes since the last disposition hearing. Sometimes the Review Board decides that the accused person should no longer be detained in a psychiatric facility and should get a conditional discharge or an absolute discharge.

Who will be at the hearing?

When the Review Board sits to review cases, at least three members must be present, including the chairperson and the psychiatrist. The accused person, his/her lawyer, the Crown prosecutor, and witnesses providing relevant evidence on the mental health of the accused person may be present. With the approval of the Review Board, victims making victim impact statements may attend. Others who may be at the hearing include family members of the accused person and members of the media.

For More Information

Public Legal Education and Information Service of New Brunswick

Public Legal Education and Information Service of New Brunswick (PLEIS-NB) has a number of resources to help explain the court process and provide information on the rights of an accused person, court proceedings and what happens at a trial. Check out the PLEIS-NB website at: www.legal-info-legale.nb.ca.

Community Mental Health Centres

For more information about the services and programs available from the Community Mental Health Centres (CMHCs), contact your local office.

Look in the Provincial Government section of the Blue Pages of your telephone book under Health-Mental Health Services to find your local office.

Restigouche Hospital Centre

The Restigouche Hospital Centre (RHC) provides psychiatric assessment services for the provincial criminal justice system. The RHC also treats accused persons who have been found not criminally responsible on account of a mental disorder or unfit to stand trial, as well as other related services. For further information, call 506-789-7000.

Glossary

Absolute discharge: accused person lives at home without any conditions. There will only be an absolute discharge if the person is not a threat to the safety of the public

Accused person: a person charged with a crime

Acquit: when the court decides that the accused person is not guilty of the charge

Assessment order: an order made by a judge for the accused person to have a psychiatric examination

Conditional discharge: accused person can live at home but must follow certain conditions and mental health officials will conduct follow up visits

Conditions: rules which set out what the person must do or not do

Court proceedings: the trial and the hearings leading up to the trial

Criminal Code of Canada: Federal legislation that is the source of criminal law and procedure in Canada

Disposition/disposition order: a decision about the care and conditions required for an accused person who is found unfit to stand trial or not criminally responsible on account of a mental disorder

Disposition hearing: a meeting with the accused person and the Review Board or a judge

Hearing: a proceeding for the presentation of evidence

Not criminally responsible on account of a mental disorder (NCR): decision by a judge or jury that the person who committed the crime did not understand the nature of his or her actions and/or that they were wrong at the time of the crime. Also called the “mental disorder defence”

Psychiatric assessment: a report on the mental condition of the accused person

Psychiatric facility: a hospital for people with mental health issues

Review Board: a body created under the **Criminal Code of Canada** to make or review the conditions imposed on a person who is unfit to stand trial or is not criminally responsible on account of a mental disorder

Stay of proceedings: the end of the judicial process

Unfit to stand trial: when a mental disorder affects the accused person’s ability to understand the court proceedings or communicate with a lawyer at the time of the trial.

