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## LEGISLATIVE SUMMARY



### **Bill C-14: An Act to amend the Criminal Code and the National Defence Act (mental disorder)**

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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*Legislative Summary of Bill C-14*  
(Legislative Summary)

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# LEGISLATIVE SUMMARY OF BILL C-14: AN ACT TO AMEND THE CRIMINAL CODE AND THE NATIONAL DEFENCE ACT (MENTAL DISORDER)

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## 1 BACKGROUND

Bill C-14, An Act to amend the Criminal Code and the National Defence Act (mental disorder) (short title: Not Criminally Responsible Reform Act), was previously introduced in the 1<sup>st</sup> Session of the 41<sup>st</sup> Parliament as Bill C-54. On 28 May 2013, after passing second reading in the House of Commons, Bill C-54 was sent to the Standing Committee on Justice and Human Rights, which considered it clause by clause. On 12 June 2013, the committee agreed to report the bill with amendments, and the report was tabled in the House of Commons on 13 June 2013.<sup>1</sup> On 18 June 2013, having passed third reading, the bill was sent for first reading in the Senate. It died on the *Order Paper* when Parliament was prorogued on 13 September 2013.

Pursuant to an order of the House of Commons, dated 21 October 2013, allowing the government to reinstate bills in the new session at their last completed stage in the previous session, Bill C-14 was introduced and read for the first time in the Senate on 26 November 2013.

The bill amends the statutory framework that deals with mental disorders in the *Criminal Code* (Code)<sup>2</sup> (Part XX.1) and the *National Defence Act*.<sup>3</sup> According to its summary, the bill's objectives are these:

- to specify that the “paramount consideration” in the decision-making process is the safety of the public (clause 9);
- to create a scheme for finding that certain persons who have been found not criminally responsible on account of mental disorder are also “high-risk accused” (clause 12); and
- to enhance “the involvement of victims” in the processes concerning mental disorder (clauses 7 and 10).

It is important to note that Bill C-14 affects only those provisions addressing an accused found not criminally responsible on account of mental disorder. It does not affect provisions addressing a person's fitness to stand trial.

Bill C-14 contains the provisions of the former Bill C-54, including the amendments made by the Standing Committee on Justice and Human Rights in 2013.

### 1.1 CURRENT PROVISIONS OF PART XX.1 OF THE *CRIMINAL CODE*

Part XX.1 of the Code establishes the statutory framework that governs the treatment of accused who are declared unfit to stand trial or not criminally responsible on account of mental disorder. This exhaustive and independent system was codified in 1992 with the passage of Bill C-30.<sup>4</sup>

The statutory framework demonstrates Parliament's intention to favour individual, therapeutic treatment of mentally disordered offenders.<sup>5</sup> Accordingly, a verdict of not criminally responsible leads to neither an acquittal nor a conviction. In *Winko v. British Columbia (Forensic Psychiatric Institute)*, the Supreme Court of Canada held as follows:

By creating an assessment-treatment alternative for the mentally ill offender to supplant the traditional criminal law conviction-acquittal dichotomy, Parliament has signalled that the NCR [not criminally responsible] accused is to be treated with the utmost dignity and afforded the utmost liberty compatible with his or her situation.<sup>6</sup>

Cases dealt with by the courts under Part XX.1 of the Code can be fraught with constitutional issues, including the principles of equality, justice and fairness. The issues in these cases are complicated by the need to take into account medical and social considerations as well as legal considerations, including the need to reconcile the goals of public safety with fair treatment of an accused person suffering from a mental disorder.<sup>7</sup>

#### 1.1.1 KEY DECISION POINTS CURRENTLY PROVIDED FOR IN PART XX.1 OF THE *CRIMINAL CODE*<sup>8</sup>

It is a fundamental principle of the Canadian justice system that no person is criminally responsible for an act if he or she is “incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.”<sup>9</sup>

Section 16 of the Code sets out the presumption that everyone is free from mental disorder. Accordingly, the party to a proceeding who claims otherwise has the burden of proving, on a balance of probabilities, that at the time of the offence the accused was suffering from a mental disorder and so is exempt from criminal responsibility.

##### 1.1.1.1 THE POWER OF THE COURT TO ORDER AN ASSESSMENT

A court may order that the mental condition of the accused be assessed to determine “whether the accused was, at the time of the commission of the alleged offence, suffered from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection 16(1).”<sup>10</sup>

At any stage of the proceeding, the court may order an assessment of its own motion against the accused,<sup>11</sup> or it may do so on application of the accused or the prosecutor.<sup>12</sup>

##### 1.1.1.2 VERDICT OF NOT CRIMINALLY RESPONSIBLE

Where the jury or the judge finds, after the evidence has been heard, that an accused committed the act or made the omission in question but was at the time suffering from mental disorder so as to be exempt from criminal responsibility (by virtue of section 16 of the Code), the jury or the judge must render a verdict that the accused is not criminally responsible on account of mental disorder.<sup>13</sup>

### 1.1.1.3 DISPOSITION HEARINGS HELD BY A COURT OR A REVIEW BOARD

Where there is a verdict of not criminally responsible on account of mental disorder, the court may, of its own motion, and must on application by the accused or the prosecutor, hold a disposition hearing to determine what is to be done with the accused. The court makes a disposition regarding the accused only if it is satisfied that it can readily do so and that a disposition should be made without delay.<sup>14</sup>

Otherwise, the court must send to a Review Board (discussed in section 1.1.2 of this Legislative Summary) all materials in its possession, such as the transcript of the court proceedings and any other information related to the proceedings.<sup>15</sup>

The scheme provides that a hearing held by the court or the Review Board may be conducted in as informal a manner as is appropriate in the circumstances. The accused has the right to be present at the hearing unless circumstances dictate that he or she should be barred. The accused also has the right to be represented by counsel.<sup>16</sup>

If the court makes no disposition and sends the matter to the Review Board, the Board makes a disposition as soon as is practicable after the verdict, but not later than 45 days after the verdict was rendered. Under exceptional circumstances, the prescribed time may be extended to a maximum of 90 days after the verdict was rendered.

If the court chooses to make a disposition regarding the accused, the Review Board must hold a hearing and make a disposition not later than 90 days after the court's disposition was made, unless that disposition was an absolute discharge.<sup>17</sup>

The court or the Review Board must state, in the record of the proceedings, its reasons for making a disposition, and it must provide every party with a copy of the disposition and those reasons.<sup>18</sup>

### 1.1.1.4 TERMS OF DISPOSITIONS THAT CAN BE MADE BY A COURT OR A REVIEW BOARD

Under the existing wording of section 672.54 when a court or Review Board makes a disposition, it must consider “the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused” and make one of the following dispositions “that is the least onerous and least restrictive to the accused”:

- discharge the accused absolutely if in the opinion of the court or the Review Board the accused is not a significant threat to the safety of the public;
- discharge the accused subject to conditions that the court or the Review Board considers appropriate; or
- direct that the accused be detained in custody in a hospital, subject to conditions that the court or the Review Board considers appropriate.<sup>19</sup>

#### 1.1.1.5 REVIEW OF THE DISPOSITION

At present, every disposition made by the Review Board must be reviewed annually by the Board until the accused is discharged absolutely. However, the Board may extend the time for holding a review to a maximum of 24 months if the accused is represented by a lawyer and if the accused and the Attorney General agree.

If the accused has been found not criminally responsible on account of mental disorder for a serious personal injury offence<sup>20</sup> and has been detained in a hospital, and if the Review Board is satisfied that the condition of the accused is not likely to improve and that detention remains necessary for the period of the extension, the Review Board may extend the time for a subsequent review to a maximum of 24 months.<sup>21</sup>

#### 1.1.2 RULES APPLICABLE TO HEARINGS HELD BY A REVIEW BOARD AND REVIEW BOARD MEMBERSHIP

A Review Board is a specialized and independent administrative tribunal. It is called on to act in an inquisitorial capacity,<sup>22</sup> and case law has acknowledged the importance of this role, recognizing a Board's expert membership and broad inquisitorial powers.<sup>23</sup>

A Review Board must make or review dispositions concerning any accused declared unfit to stand trial or not criminally responsible on account of mental disorder. Sections 672.38 to 672.45 of the Code govern the establishment and membership of Review Boards. Under section 672.38 of the Code, a Review Board is to be established or designated for each province and is to be treated as having been established under the laws of the province.

Each Review Board consists of at least five members appointed by the Lieutenant Governor in Council of the province in question. The chairperson of a Review Board is generally a judge or a retired judge.<sup>24</sup> At least one member must be entitled under the laws of a province

to practise psychiatry and, where only one member is so entitled, at least one other member must have training and experience in the field of mental health, and be entitled under the laws of a province to practise medicine or psychology.<sup>25</sup>

#### 1.2 STATISTICS

Very few individuals are found not criminally responsible on account of mental disorder. The majority of such findings occurred in the largest provinces: British Columbia, Ontario and Quebec.<sup>26</sup>

[T]here were a total of 607 cases deemed NCRMD by review boards over the course of one year (May 2004–April 2005). By comparison, there were 260,649 adult cases found guilty of a criminal offence in Canada over the course of one year 2008/09.<sup>27</sup>



Using data gathered for the Department of Justice's Research and Statistics Division, a study released in 2013 presented conclusions that addressed the number of cases and the recidivism rate of those declared not criminally responsible on account of mental disorder (NCRMD) after a serious offence involving violence. The key findings are as follows:

- [S]evere violent offences defined as homicide, attempted murder and sexual offences, represent less than one in ten offences perpetrated by the entire NCRMD population in the three most populated provinces in Canada.
- Individuals accused of homicide were comprised of a higher proportion of females than other groups, were more likely to have a single diagnosis rather than comorbid disorders and displayed the lowest rate of recidivism among the three categories of severe violent offences. Victims of individuals found NCRMD accused of homicide or attempted murder were more likely to be individuals in close proximity to individuals living with mental illness.
- Individuals accused of a sexual offence were almost exclusively male, tended to have a higher rate of previous offences and a higher rate of recidivism. They were also more likely to recidivate violently and have a violent criminal past. Their victims were more likely to be strangers than the two other groups. The rates of absolute discharge were also higher earlier than the two other groups.
- Slightly less than half of NCRMD individuals accused of a SVO [serious violent offence] had been previously convicted or had a previous finding of NCRMD, most of whom [sic] for non-violent offences. There is significant variability in the rates of absolute discharge by type of SVO. Finally, rates of re-offending were quite low over a three year follow-up period (14%).<sup>28</sup>

## 2 DESCRIPTION AND ANALYSIS

### 2.1 NOTICE TO VICTIMS AND CONSIDERATION OF VICTIM IMPACT STATEMENTS (CLAUSES 7 AND 10)

Clause 7 of Bill C-14 amends section 672.5 of the Code, which sets out the rules governing hearings held by a court or a Review Board, to add that these rules apply to hearings involving a high-risk accused.

Clause 7(2) of the bill amends section 672.5 of the Code to provide that a victim be told both when an accused is released absolutely or conditionally and where the accused intends to live, if the victim requests this information. The stipulation that the accused's intended place of residence be provided was added through an amendment made by the Standing Committee on Justice and Human Rights.

Clause 7(3) of the bill amends section 672.5 of the Code to provide that, if the Review Board refers to a court a finding that an accused is a "high-risk accused" for review, it must notify all victims of the offence that they are entitled to file a statement with the court.

Clause 7(5) adds a requirement that the court or Review Board ask the prosecutor or the victim – or any person representing the victim of the offence – whether the victim has been advised of the opportunity to prepare a statement.

The hearings may be adjourned in order to permit the victim to prepare a statement if the court or Review Board is satisfied that the adjournment would not interfere with the proper administration of justice.

Section 672.541 of the Code currently states that a court or Review Board must take into consideration any victim impact statement in making a disposition under Part XX.1 of the Code or in determining the appropriate disposition or conditions under section 672.54. Clause 10 of the bill adds that the court must also consider a victim impact statement when deciding whether to find that the accused is a high-risk accused, or to revoke such a finding.

## 2.2 PUBLIC SAFETY AS THE PARAMOUNT CONSIDERATION (CLAUSE 9)

Clause 9 of the bill reformulates the criteria that the court or Review Board must consider when making one of the three dispositions provided for in section 672.54 of the Code: it requires the court or Review Board to take into account the safety of the public as the paramount consideration in its decision-making process. The notion that the court or Review Board must make the disposition that is the least onerous and least restrictive to the accused has been removed from the wording. Under the newly worded provision, when making a disposition,

a court or Review Board ... shall, taking into account the safety of the public, *which is the paramount consideration*, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused, make one of the following dispositions that is necessary and appropriate in the circumstances. [Author's emphasis]

## 2.3 SIGNIFICANT THREAT TO THE SAFETY OF THE PUBLIC AND THE DUTY TO CONSIDER WHETHER IT IS DESIRABLE TO IMPOSE ADDITIONAL CONDITIONS ON THE ACCUSED (CLAUSE 10)

The bill creates new section 672.5401, which defines “a significant threat to the safety of the public” for the purposes of section 672.54 as

a risk of serious physical or psychological harm to members of the public – including any victim of or witness to the offence, or any person under the age of 18 years – resulting from conduct that is criminal in nature but not necessarily violent.

Clause 10 of the bill also creates new section 672.542, which requires a court or Review Board, when holding a hearing under section 672.5, to consider

whether it is desirable, in the interests of the safety and security of any person, particularly a victim of or witness to the offence or a justice system participant, to include as a condition of the disposition that the accused

(a) abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the disposition, or refrain from going to any place specified in the disposition; or

(b) comply with any other condition specified in the disposition that the court or Review Board considers necessary to ensure the safety and security of those persons.

#### 2.4 THE ESTABLISHMENT OF A NEW DESIGNATION OF “HIGH-RISK ACCUSED” (CLAUSE 12)

Clause 12 of the bill allows a court to designate an accused who was 18 years of age or more at the time of the commission of the offence as a “high-risk accused” (new section 672.64). To be so designated, the accused must have been found not criminally responsible on account of mental disorder for a serious personal injury offence.

As defined under section 672.81(1.3) of the Code, a serious personal injury offence includes the use of violence, conduct that endangers or is likely to endanger the life or safety of another person, conduct that inflicts or is likely to inflict severe psychological damage upon another person, sexual offences, and sexual assault.

It should be noted that this application must be made by the prosecutor before any disposition is made to discharge an accused absolutely. The court must be satisfied of one of two things:

- that there is a substantial likelihood that the accused will use violence that could endanger the life or safety of another person, or
- that the acts that constituted the offence were of such a brutal nature as to indicate a risk of grave physical or psychological harm to another person.

New section 672.64(2) of the Code states that the court must consider all relevant evidence in deciding whether to find that the accused is a “high-risk accused,” including:

- (a) the nature and circumstances of the offence;
- (b) any pattern of repetitive behaviour of which the offence forms a part;
- (c) the accused’s current mental condition;
- (d) the past and expected course of the accused’s treatment, including the accused’s willingness to follow treatment; and
- (e) the opinions of experts who have examined the accused.

It is possible to appeal a decision finding or not finding an accused to be “a high-risk accused” (new sections 672.64(4) and 672.64(5) of the Code).

2.4.1 RESTRICTIONS ON THE AUTHORITY TO  
DECREASE THE RESTRICTIONS ON THE LIBERTY OF  
A HIGH-RISK ACCUSED (CLAUSE 11)

Section 672.56 of the Code currently states that a Review Board that has made a disposition that the accused be discharged subject to certain conditions (section 672.54(b)) or that the accused be detained in custody in a hospital subject to certain conditions (section 672.54(c)) may delegate to the person in charge of the hospital the authority to direct that the restrictions on the liberty of the accused be increased or decreased. Under these provisions, if the decision to increase the restrictions on the liberty of the accused is made, the accused must be given notice of the increase and, if the increased restrictions remain in force for a period exceeding seven days, the Review Board must also be informed.

Clause 11(2) of the bill amends section 672.56 to add that the authority to direct that the restrictions on the liberty of a high-risk accused be decreased is subject to the restrictions set out in new section 672.64(3). This section provides that the high-risk accused's detention in hospital can only include periods outside the hospital if the person in charge of the hospital believes that the following conditions exist:

- the absence is an appropriate one for medical reasons or for a treatment and the accused is escorted by an authorized person; 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.

2.4.2 REVIEW OF A FINDING OF HIGH-RISK ACCUSED (CLAUSE 15)

The current statutory framework provides that for each disposition that it makes, the Review Board must annually hold a hearing to review the disposition, and that the period during which the review may be held can be extended to a maximum of 24 months if the terms laid out in section 672.81 are met.

Clause 15 of the bill states that, in the case of a high-risk accused, the Review Board may extend the time for holding a hearing to a maximum of 36 months after making or reviewing a disposition, if the accused is represented by counsel and the accused and the Attorney General consent to the extension. The Review Board may also extend the time for holding a subsequent hearing to a maximum of 36 months if the Review Board is satisfied that the accused's condition is not likely to improve and that detention remains necessary for the period of the extension.

The accused may appeal the disposition to extend the time for holding a subsequent hearing.

### 2.4.3 REVOKING A FINDING OF HIGH-RISK ACCUSED (CLAUSE 16)

Clause 16 of the bill adds new section 672.84, which provides for the revocation of a finding of high-risk accused. If a Review Board holds a hearing regarding a high-risk accused under section 672.81 (annual review) or 672.82 (discretionary review), it must, on the basis of any relevant information and if it is satisfied that there is not a substantial likelihood that the high-risk accused will use violence that could endanger the life or safety of another person, refer the finding for review to the relevant superior court, which can revoke the finding.

### 2.5 REVIEW (CLAUSE 20.1)

One of the amendments made to the initial bill (the former Bill C-54) by the House of Commons Standing Committee on Justice and Human Rights was the addition of a clause to provide for a comprehensive review of the operation of sections 672.1 to 672.89 of the Code within five years of the coming into force of clauses 2 to 20 of the bill. The review will be carried out by a committee of the Senate, of the House of Commons or of both houses of Parliament, and that committee must submit its report and recommendations to one or both houses of Parliament.

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## NOTES

1. House of Commons, Standing Committee on Justice and Human Rights, [Twenty-Fifth Report](#), 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 13 June 2013.
2. [Criminal Code](#), R.S.C. 1985, c. C-46.
3. [National Defence Act](#), R.S.C. 1985, c. N-5.
4. *An Act to amend the Criminal Code (mental disorder) and to make consequential amendments to other Acts*, S.C. 1991, c. 43. The chronology provided in Appendix A of this legislative summary outlines the evolution of the law from 1843 to 2005 as regards Part XX.1 of the *Criminal Code*.
5. Joan Barrett and Riun Shandler, *Mental Disorder Law in Canadian Criminal Law*, Thomson Carswell, Toronto, 2006, pp. 1–9.
6. [Winko v. British Columbia \(Forensic Psychiatric Institute\)](#), [1999] 2 S.C.R. 625, para. 42.
7. Barrett and Shandler (2006), p. iii (Foreword by Justice J. L. Laskin).
8. The chart in Appendix B of this Legislative Summary shows the key decision points currently set out in Part XX.1 of the *Criminal Code*.
9. *Criminal Code*, s. 16.
10. *Criminal Code*, s. 672.11(b).
11. *Criminal Code*, s. 672.12(1).
12. The limits to the prosecution's right to ask for an assessment of whether the accused is exempt from criminal responsibility are described in section 672.12(3) of the *Criminal Code*.
13. *Criminal Code*, s. 672.34.
14. *Criminal Code*, s. 672.45.

15. Ibid.
16. *Criminal Code*, s. 672.5.
17. *Criminal Code*, s. 672.47(3).
18. *Criminal Code*, s. 672.52(3).
19. *Criminal Code*, s. 672.54.
20. A “serious personal injury offence” is defined in section 672.81(1.3) of the *Criminal Code* as:
  - (a) an indictable offence involving:
    - (i) the use or attempted use of violence against another person, or
    - (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person; or
  - (b) an indictable offence referred to in section 151, 152, 153, 153.1, 155, 160, 170, 171, 172, 271, 272 or 273 or an attempt to commit such an offence.
21. *Criminal Code*, s. 672.81(1.2).
22. *Winko*, paras. 54 and 55.
23. See, for example [R. v. Owen](#), [2003] 1 S.C.R. 779. See also *Criminal Code*, s. 672.43: The chairperson has all the powers that are conferred by sections 4 and 5 of the *Inquiries Act* on persons appointed as commissioners under Part I of that Act.
24. *Criminal Code*, s. 672.4(1).
25. *Criminal Code*, s. 672.39.
26. Information in this paragraph was taken from the Mental Health Commission of Canada, [“About the Not Criminally Responsible Due to a Mental Disorder \(NCRMD\) Population in Canada,” Fact Sheet](#), 24 April 2013.
27. Ibid.
28. Anne G. Crocker et al., [Description and processing of individuals found Not Criminally Responsible on Account of Mental Disorder accused of “serious violent offences.”](#) Final report submitted to the Research and Statistics Division, Department of Justice, March 2013, p. 24.

## APPENDIX A – THE LAW ON MENTALLY DISORDERED OFFENDERS: CHRONOLOGY

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This chronology outlines the evolution of the law on mentally disordered offenders from 1843 to 2005.<sup>1</sup>

- 1843 – The common law defence of insanity is formulated by the British House of Lords in *M’Naghten’s Case*.<sup>2</sup> The defence rests on the principle that, in order to convict, the state must prove not only a wrongful act, but also a guilty mind.
- 1892 – Canada’s first *Criminal Code*<sup>3</sup> makes the insanity defence available to an accused person who, because of a “natural imbecility” or “disease of the mind,” was incapable of appreciating the nature and quality of the act or omission, and of knowing it was wrong.
- 1991 – The Supreme Court of Canada renders its decision in *R. v. Swain*,<sup>4</sup> concluding that the automatic indeterminate detention of persons found not guilty by reason of insanity, as set out in the *Criminal Code*,<sup>5</sup> infringes their right to liberty under the *Canadian Charter of Rights and Freedoms*.<sup>6</sup>
- 1992 – A new Part XX.1 of the *Criminal Code* comes into force to govern mentally disordered accused persons, following the passage of Bill C-30 by Parliament.<sup>7</sup> Among other things, it allows for the possibility of an immediate absolute discharge and requires, in all other cases, annual Review Board hearings so that the least restrictive disposition is always imposed on a mentally disordered accused. Bill C-30 also replaces references to “insanity” with the term “mental disorder” and extends the defence to summary conviction in addition to indictable offences.
- 1999 – The Supreme Court of Canada renders its decision in *Winko v. British Columbia (Forensic Psychiatric Institute)*,<sup>8</sup> upholding the regime in Part XX.1 of the *Criminal Code* as constitutional and concluding that it properly balances public safety and the rights of mentally disordered accused.
- 2002 – Further to a parliamentary review required by Bill C-30, the House of Commons Standing Committee on Justice and Human Rights tables 19 recommendations intended to improve Part XX.1 of the *Criminal Code*.<sup>9</sup> The Government of Canada responds, indicating that it will introduce legislation to implement most of the recommendations as well as other improvements.<sup>10</sup>
- 2004 – The Supreme Court of Canada renders its decision in *R. v. Demers*,<sup>11</sup> concluding that the ongoing subjection of a permanently unfit accused to Part XX.1 of the *Criminal Code* constitutes a violation of liberty under the *Canadian Charter of Rights and Freedoms* where the accused poses no significant threat to public safety.

2005 – Parliament passes Bill C-10,<sup>12</sup> amending Part XX.1 of the *Criminal Code*. Most notably, it expands the powers of Review Boards by allowing them to order psychological assessments, order publication bans, and extend the time for the next hearing; provides for the possibility of psychological assessments by persons other than medical practitioners; allows victim impact statements to be presented at hearings; permits a stay of proceedings in the case of a mentally disordered accused who is permanently unfit to stand trial; and repeals unproclaimed provisions that would have limited the length of detention of a mentally disordered accused, or allowed this period to be extended for particularly dangerous persons.<sup>13</sup>

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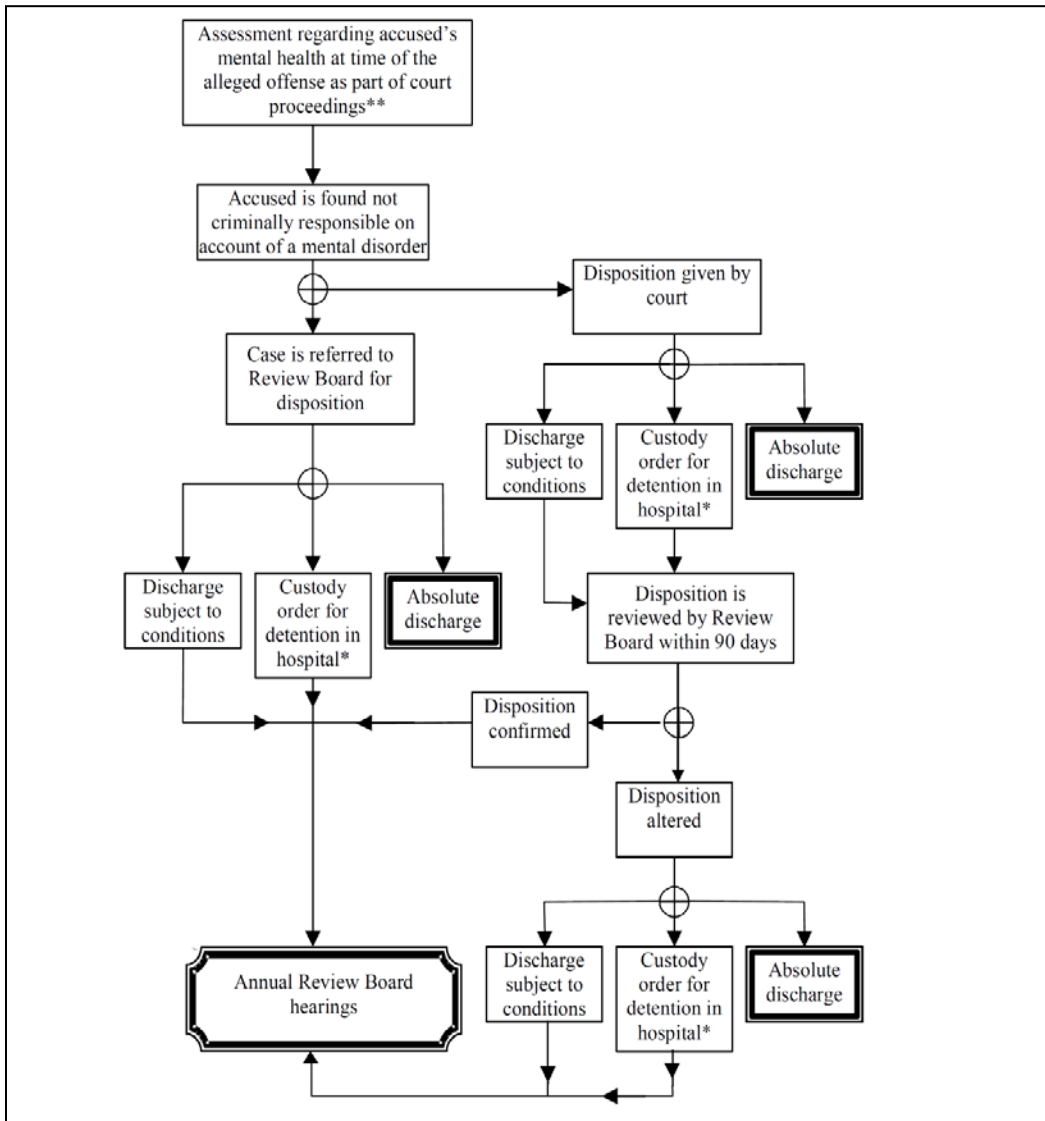
## NOTES

1. The source of this chronology is Wade Raaflaub, *The Mental Disorder Provisions of the Criminal Code*, Publication no. 2005-05-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 22 June 2005.
2. *Daniel M'Naghten's Case* (1843), 8 E.R. 718 (H.L.).
3. *Criminal Code*, S.C. 1892, c. 29, s. 11.
4. [R. v. Swain](#), [1991] 1 S.C.R. 933.
5. *Criminal Code*, R.S.C. 1970, c. C-34, s. 542(2), later *Criminal Code*, R.S.C. 1985, c. C-46, s. 614(2).
6. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11. The Supreme Court suspended the declaration of invalidity of the relevant section of the *Criminal Code* to give Parliament an opportunity to adopt remedial legislation, which was introduced as Bill C-30.
7. *An Act to amend the Criminal Code (mental disorder) and to amend the National Defence Act and the Young Offenders Act in consequence thereof*, S.C. 1991, c. 43. Most of Bill C-30 was proclaimed in force in February 1992.
8. [Winko v. British Columbia \(Forensic Psychiatric Institute\)](#), [1999] 2 S.C.R. 625.
9. House of Commons, Standing Committee on Justice and Human Rights, [Review of the Mental Disorder Provisions of the Criminal Code](#), 14<sup>th</sup> Report, June 2002.
10. Government of Canada, [Response to the 14<sup>th</sup> Report of the Standing Committee on Justice and Human Rights: Review of the Mental Disorder Provisions of the Criminal Code](#), November 2002.
11. [R. v. Demers](#), [2004] 2 S.C.R. 489. The Supreme Court suspended its declaration that the relevant provisions of the *Criminal Code* were invalid to allow Parliament the opportunity to pass amendments, which were introduced in Bill C-10.
12. *An Act to amend the Criminal Code (mental disorder) and to make consequential amendments to other Acts*, S.C. 2005, c. 22. See Wade Raaflaub, [Legislative Summary of Bill C-10: An Act to amend the Criminal Code \(mental disorder\) and to make consequential amendments to other Acts](#), Publication no. LS 481-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 20 May 2005.
13. These unproclaimed provisions on “capping” and “dangerous mentally disordered accused” were considered to be unnecessary, as the detention of a mentally disordered accused is not intended to punish but to treat and rehabilitate, and an accused is entitled to release if he or she poses no significant threat to public safety.



## APPENDIX B – CURRENT PART XX.1 OF THE *CRIMINAL CODE*: KEY DECISION POINTS

Figure B.1 – Key Processes in Determining Criminal Responsibility in  
Cases Involving Mentally Disordered Accused



Notes: \* While both the court and Review Board have the authority to detain a person found NCRMD [Not Criminally Responsible Due to a Mental Disorder] in hospital, the accused may refuse treatment while detained.

\*\* In accordance with the decision of the Supreme Court of Canada in *R. v. Swain* in 1991, the Crown may not raise the issue of the accused's mental state before the Crown proved that the crime had been committed or where the accused had put their mental capacity into issue.

Source: Statistics Canada, [Special Study on Mentally Disordered Accused and the Criminal Justice System](#), 2003.