

# The Legal Side of Forensics

Forensic Psychiatric Hospital





# The Legal Side of Forensics

Prepared by Barbara Lohmann, B. Comm, LLB  
Manager, Director’s Office  
Forensic Psychiatric Services Commission

## Contents

- Introduction** ..... 2
  - Forensic Psychiatric Services Commission (FPSC) ..... 2
  - Forensic Psychiatry..... 2
  - Forensic Psychiatric Hospital (FPH)..... 2
  
- British Columbia Review Board (BCRB)** ..... 3
  - Role and Responsibilities ..... 3
  - BCRB Hearings..... 3
  - BCRB Disposition/Order..... 3
  
- Possible Dispositions/Orders issued by BCRB** ..... 4
  
- Patient Scenarios:**
  - Scenario 1: Remand Assessments for Fitness or NCRMD..... 5
  - Scenario 2: Treatment to Unconditional Discharge to Reintegration to Community..... 6-7
  - Scenario 3: Treatment ..... 8
  - Scenario 4: Temporary Absence ..... 9
  
- Legal Status –Terms & Definitions** ..... 10
  
- Notes: ..... 12

# Introduction

Welcome to the Forensic Psychiatric Hospital (FPH); the only one of its kind in British Columbia. This is where psychiatry and law intersect. Our patients have a mental illness and have come into conflict with the law. The Federal Parliament created a special regime within the Criminal Code for the treatment of those who offend, while mentally ill, with a special approach emphasizing individualized assessment and provision of opportunities for appropriate treatment.

This document is intended to help provide an overview of the legal terms and processes that you will encounter at FPH.

## Forensic Psychiatric Services Commission (FPSC)

The Forensic Psychiatric Services Commission (FPSC) provides regional, court-related forensic psychiatric assessment, treatment and community case-management services for adults who are experiencing mental health disorders and are in conflict with the law.

## Forensic Psychiatry

Forensic Psychiatry is the branch of psychiatry that deals with issues arising between psychiatry and the law, and with the flow of mentally-disordered offenders along a continuum of social systems.

## Forensic Psychiatric Hospital (FPH)

A secure, 190-bed hospital and the only one of its kind in BC. Patients at FPH have some form of mental disorder, and have also come into conflict with the law. They have been sent to FPH by the courts; either for Forensic Psychiatric Assessment or for treatment. All patient charts contain a legal section in which all legal orders and documents are filed.



# British Columbia Review Board (BCRB)

## Role and Responsibilities

The BCRB is an independent, specialized administrative tribunal established under the Criminal Code of Canada. BCRB has the same authority as the Supreme Court of British Columbia and has ongoing jurisdiction to hold hearings, and to make and review dispositions (orders), when persons charged with crimes, ('the accused') have been given verdicts of Unfit to Stand Trial (UST) or Not Criminally Responsible due to Mental Disorder (NCRMD) by the court.

The BCRB is responsible for protecting public safety, while safeguarding the rights and freedoms of mentally-ill persons. NCRMD and Unfit persons, who are admitted to FPH, must appear at a BCRB hearing, at least once per year.

## BCRB Hearings

BCRB hearings are inquisitorial (versus adversarial) in nature. The BCRB consists of a panel of 3 people; the Chair (a retired judge or a lawyer), a Psychiatrist, and a Mental Health Professional (physician, psychologist, social worker or criminologist).

BCRB hearings are open to the public. FPH staff are permitted to attend and observe hearings, and may also be required to escort a patient to a hearing. The hearing is considered to be an official court proceeding. Therefore, court decorum, dress and behaviour must be adhered to by all who are present in the room. (for example, no cell phones, caps, hats, or talking are permitted).

## BCRB Disposition/Order

Normally, within 24 hours of the hearing, the BCRB issues the "Disposition" or "Order" for the accused. Within 6-8 weeks of the hearing, the BCRB issues the reasons for their decision. In making a Disposition/Order, the BCRB considers:

- the degree to which the accused presents a risk to the public;
- the accused's mental condition;
- the reintegration of the accused into society; and
- other needs of the accused

## Possible Dispositions/Orders issued by BCRB:

One of three possible Dispositions/Orders are granted to the accused:

### **Custody Disposition**

The accused remains under the jurisdiction of the BCRB and must continue to receive treatment at FPH until his/her next BCRB hearing. Custody orders contain conditions which outline the level of privileges that may be granted to the accused.

### **Conditional Discharge**

The accused remains under the jurisdiction of the BCRB, but is permitted to reside in the community. Care for the accused is transferred to one of the six outpatient Forensic Clinics in BC.

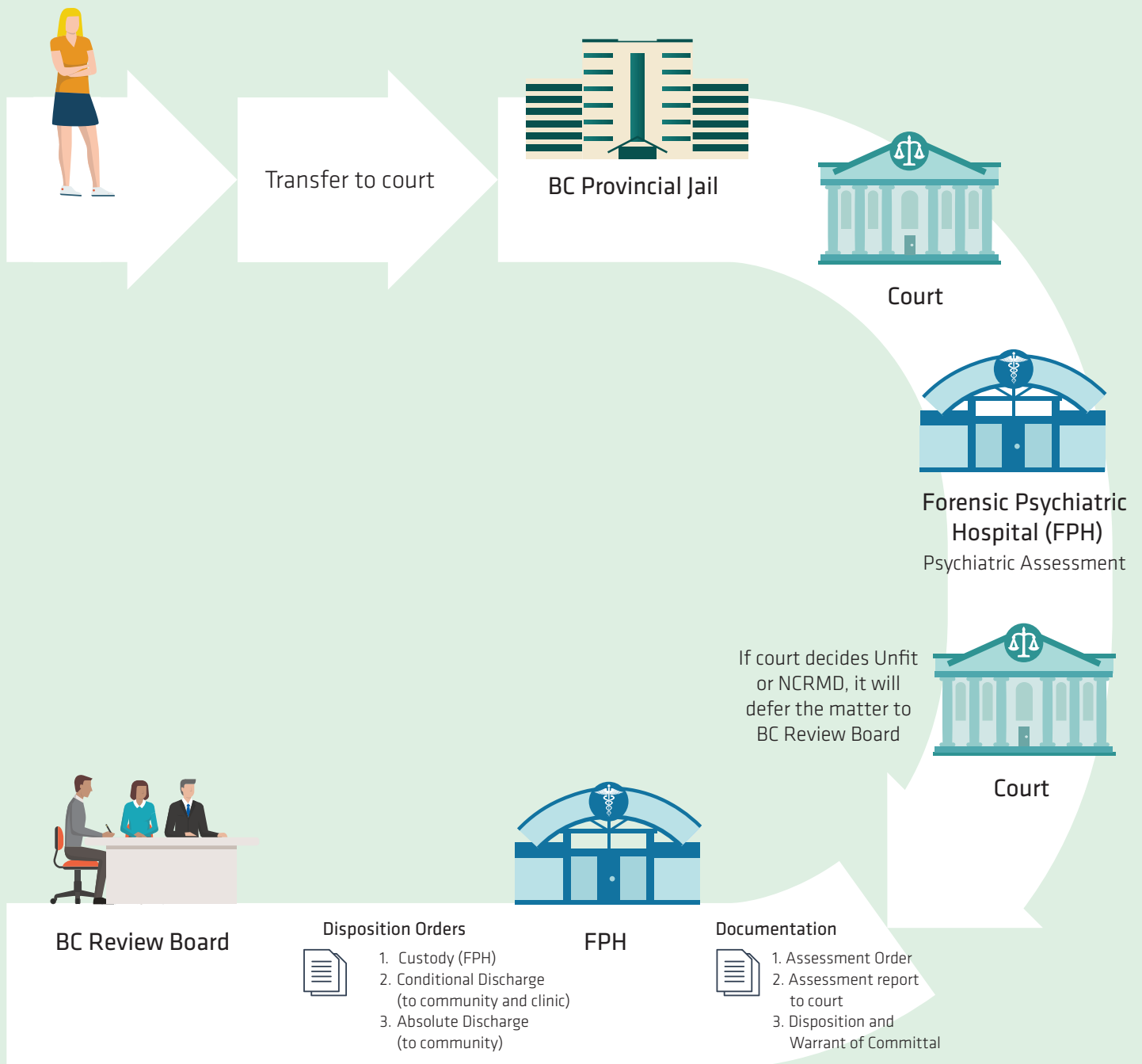
### **Absolute Discharge**

The accused is discharged/released with no conditions, and is no longer under the jurisdiction of the BCRB.



# Scenario 1: Remand Assessments for Fitness or NCRMD

Amanda is accused of a crime and criminal charges have been laid against her. There are indications that mental illness may be a factor in Amanda’s alleged criminal offense, or interfering with her ability to understand the nature or objectives of the criminal court proceedings. The court may order a fitness or Not Criminally Responsible by Reason of Mental Disorder (NCRMD) assessment. Therefore, Amanda is transferred to Forensic Psychiatric Hospital (FPH). The psychiatrist will perform an assessment to make a recommendation to the court regarding Amanda’s fitness or NCRMD. If the court decides that Amanda is unfit to stand trial or NCRMD, it will defer the matter to the BC Review Board for a disposition hearing.



# Scenario 2: Treatment to Unconditional Discharge to Reintegration to Community



**January 2012**

John was 20 years old when, in a psychotic state, he killed his mother in the home they shared. He was admitted to FPH for an NCRMD assessment on the A1 Unit



**Court**

**January 2013**

John was found NCRMD on a charge of second degree murder



**BC Review Board**

**March 2013**

At his initial Review Board hearing in March 2013, the review board issued a custody order.



**A2 Unit**

**March 2013 – April 2013**

John was permitted escorted access to the community and resided on the A2 unit.



**BC Review Board**



**Surrey Regional Clinic**

**March 2017 – Dec 2017**

After his review board hearing in March 2017, John received a conditional discharge and was now being supervised by the Surrey Out-Patient Clinic. He resided at CTC and then at Johnson Manor, a supportive housing complex in Victoria, BC.



**Coast Cottages**



**Johnson Manor Supportive Housing**



**Coast Cottages**

**Early 2017**

John began overnight visit leaves to the CTC (Coast Cottages) program.



**FPH**

**January 2018**

Unfortunately, in January 2018, John was directed back to FPH due to his drug use. As he remained at FPH for more than 7 days, a "Restriction of Liberties" was filed with the Review Board. Consequently, another review board hearing was scheduled.



**BC Review Board**

**February 2018**

Following the February 2018 hearing, John was, again, conditionally discharged back to the community.



**Surrey Regional Clinic**

**February 2018 – May 2018**

John remained under the care of the Surrey Regional Clinic and resided at the Coast Cottages.



**Coast Cottages**



Note: While each patient's index offence, diagnosis, and path to rehabilitation is different, this scenario provides one example of the very complex and difficult 6-year journey of a patient through various units, facilities and programs. This is John's story.



**A4 & A3 Unit**

May /June 2013

John was transferred to the A4 unit. However he had difficulty coping on that unit, so he was transferred to A3 the following month.



June 2013 – March 2014

On A3 John began to engage in programs



**Medium Security Elm South Unit**

March 2014 – Feb 2015

In March 2014, John was transferred to the medium security Elm South unit. That summer he began going on Staff-Supported Community Outings (SSCOs).



**BC Review Board**

February 2016

After his next review board hearing, in February 2016, John received a "broad" custody order, which included **Visit Leave Provisions**.



**Hawthorne**

**BC Review Board**

March 2015 – late 2015

After his March 2015, Review Board hearing, John received another custody order, but this order permitted both escorted and unescorted outings to the community. He was transferred to the lowest security on the Hawthorne unit, in late 2015.



**FPH**

June 2018

In June 2018, John returned himself to FPH. As he was not ready to be discharged after 7 days, another restriction of liberties was filed with the Review Board.



**BC Review Board**

July 2018

A restriction of liberties Review Board hearing was scheduled for the end of July. In the meantime, John was discharged back to the community, as his conditional discharge order remained in effect until that Review Board Hearing.



**Community**

## Scenario 3: Treatment

Jessica was found Not Criminally Responsible by reason of Mental Disorder (NCRMD) and disposition has been deferred to the BC Review Board (BCRB). Jessica is transferred from jail to FPH to commence treatment. Her treatment plan is designed to treat Jessica fairly and appropriately, while also protecting the public. During her time at FPH, Jessica receives psychiatric, psychological and social (life skills) treatment.

Jessica will have to appear before the BCRB for her initial hearing. In preparation for the hearing, Jessica's treatment team holds a pre-hearing conference to discuss their professional observations and opinions of Jessica. The psychiatrist and social worker prepare reports that are then submitted to the BCRB. Jessica appears before the BCRB and after the hearing, the BCRB makes one of three orders: custody, conditional discharge or absolute discharge.



BC Provincial Jail



FPH

Jessica undergoes treatment



FPH Treatment team meets in preparation for hearing.



Psychiatry Report and Social Work Report for BCRB



Jessica appears at her initial BCRB hearing

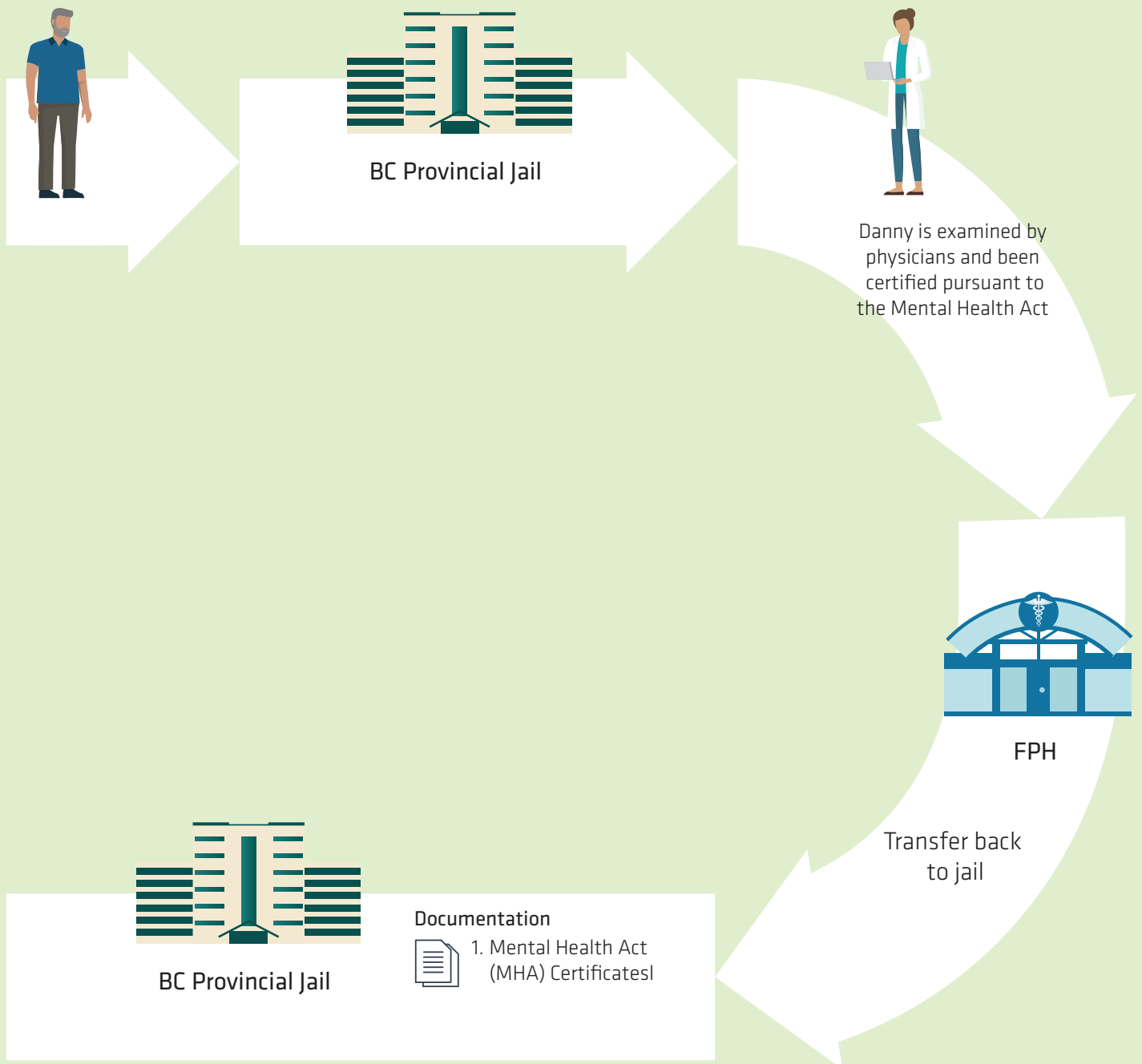


BCRB makes one of three orders:

- Custody
- Conditional discharge
- Absolute discharge

## Scenario 4: Temporary Absence

Danny is currently an inmate in jail. He suffers from a mental illness, but cannot be forced to accept treatment in jail. He has been examined by physicians and been certified pursuant to the Mental Health Act. Danny is then referred by the jail to FPH for psychiatric treatment. Once Danny's mental condition has stabilized, he is returned to jail.



# Legal Status – Terms & Definitions

## Certified

A person who has been assessed by at least two physicians pursuant to specified criteria, as requiring involuntary treatment under the Mental Health Act (MHA).

## Charges

A formal accusation made by a governmental authority (usually the public prosecutor or the police) alleging that somebody has committed a crime. Police investigate and submit a report to crown who decides whether or not to lay a charge. If charges are laid, the matter proceeds to court.

## Criminal Code of Canada

The law that codifies criminal offences and procedures in Canada. Part XX.1 of the Criminal Code establishes the current provisions for Unfit to Stand Trial (UST) and Not Criminally Responsible by Reason of Mental Disorder (NCRMD).

## Direct Back

A term used to describe an individual who has been living in the community under a BCRB conditional discharge, cared for and supervised by, one of our Forensic Clinics. If the clinical team feels the patient has decompensated, or otherwise needs to be sent back to FPH, and if the patient agrees, the patient will be sent back to FPH. The patient can be discharged back to the community when they have stabilized. If the patient is at FPH for more than 7 days, a “Restriction of Liberties” must be filed with the BCRB, and a hearing must be held.

## Director

The person responsible for all Criminal Code and BC Mental Health Act matters.

## Dual Status

Patients who have been found either Unfit or NCRMD and have a custody disposition under the jurisdiction of the BCRB on one criminal offense AND they have been found guilty and sentenced to a jail or prison sentence on another criminal offense. The BCRB may hold a placement hearing to determine whether the accused will remain in custody at FPH or will serve the sentence in jail.

## Enforcement Order

An Enforcement Order may be issued by the court when a patient who is living under a Conditional Discharge order in the community, under the care and supervision of one of our out-patient clinics, breaches one or more of their conditions. If the clinical team feels that the patient has breached one or more conditions, they can ask the police to arrest the patient and be brought before the court. If the court agrees that there has been a breach, then the court will issue an Enforcement Order and the patient is returned to FPH. The patient must remain at FPH until an Enforcement hearing is held.

## Fitness to Stand Trial

Fitness to stand trial is, in essence, a form of capacity assessment that determines: if an accused has the capacity to understand the criminal justice process and participate meaningfully in the proceedings.

## Mental Disorder

As defined by the Criminal Code of Canada “a disease of the mind” and, “any illness, disorder or abnormal condition which impairs the human mind and its functioning, excluding however, self-induced states caused by alcohol or drugs, as well as transitory states such as hysteria or concussion”.

## **Mental Health Act (MHA) of BC**

The MHA is the BC law to treat and protect people with mental disorders and to protect the public. Patients at FPH may be “Certified” under the MHA if a physician has examined the patient and is of the opinion that the patient meets the criteria for involuntary admission. Safeguards, designed to protect the rights of patients involuntarily admitted under the MHA include rights of notification, medication exams at specified times, second medical opinions and access to the Mental Health Review Panel

## **Not Criminally Responsible on account of Mental Disorder (NCRMD)**

A person who has committed a criminal act or omission, but is not held legally responsible for this because at the time, the person was suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or knowing that it was wrong.

## **Programs & Privileges Committee (P&P Committee)**

An FPH Committee that advises and makes recommendations to the Director about the level of privilege and security that will be assigned to a patient. A patient’s privileges can only be assigned in accordance with the conditions set out in their BCRB Disposition. The privileges are assigned to facilitate the safe reintegration of patients into the community and rehabilitative pathway. P&P decisions are documented through P&P Applications, P&P Decision Forms and P&P entry on the patient’s chart.

## **Sentence**

**Federal:** 2 or more years. Offender is considered a federal offender and is placed in one of 43 federal prisons in Canada.v

**Provincial:** 2 years less a day. Offender is placed in jail, also known as a “Correctional Centre”. There are 10 Correctional Centres in BC.

## **Spring Order (Order for Attendance of a Prisoner)**

An order issued by the Court to allow a person in custody to leave the custodial setting in order to attend the Court matter.

## **Temporary Absence (TA)**

A provincial corrections inmate who is certified under the MHA and temporarily admitted to FPH from a corrections facility. A TA must be supported by two MHA certificates before the patient can be removed from the corrections facility and transferred to FPH. Once stabilized, the inmate is returned to jail.

## **Treatment (Review Board Patients only)**

Patients who are deemed Unfit to Stand Trial (UST) and NCRMD by the Court under the Criminal Code, are deferred to the BC Review Board and must receive psychiatric treatment. The goal for UST patients is to restore their Fitness to Stand Trial and successfully and safely reintegrate them into the community.

## **Visit Leave to Court**

A patient who is temporarily released to attend court and must return to the Forensic Psychiatric Hospital after court.

Notes:

---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---





**BC MENTAL HEALTH  
& SUBSTANCE USE SERVICES**  
*Provincial Health Services Authority*

