



Territorial Court

**PRACTICE DIRECTION
WITH RESPECT TO
ORDERS FOR PSYCHIATRIC ASSESSMENT OR OBSERVATION
(Revised 2012-Nov-19)**

APPLICATION

This Direction applies to Orders made by a judge of the Territorial Court of the Northwest Territories or of the Youth Justice Court of the Northwest Territories for:

- Psychiatric Assessment made pursuant to Part XX.1 of the *Criminal Code*, R.S.C. 1985, c.C-46, as amended and by implication, section 141 of the *Youth Criminal Justice Act*, S.C. 2002, c. 1, as amended.
- Observation made pursuant to sections 30-34 of the *Mental Health Act*, R.S.N.W.T. 1988, c.M-10, as amended.

In this Direction, the term “Order” refers to an Order for Psychiatric Assessment or an Order for Observation.

PURPOSE

This Direction is to clarify the procedure that is to be followed when the Territorial Court of the Northwest Territories or the Youth Justice Court makes an Order.

BACKGROUND

Before a judge of the Territorial Court or the Youth Justice Court makes an Order for a Psychiatric Assessment under section 672.11 of the *Criminal Code* with respect to an Accused, or an Order for Observation made pursuant to sections 30-34 of the *Mental Health Act*, counsel will have explored options and made arrangements as to where and how the assessment or observation is to be conducted. In many cases, these Orders may need to be executed outside of the Northwest Territories.

Timely implementation of an Order requires certainty as to who is responsible to prepare it.

PROCEDURE

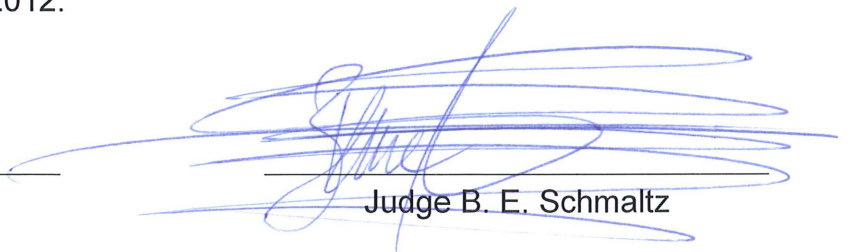
1. The steps taken by the Court, Crown, Defence and the Corrections Section of the Department of Justice will depend on which of the Court, Crown or Defence are initiating the Order. Appendix "A" to this Direction sets out guidelines as to the responsibilities of these parties in the situations where the accused is in custody and should be applied with suitable modifications where the accused is not in custody.
2. The party or counsel who seeks an Order is responsible for securing a place where the Order will be carried out and/or identifying the person who or service that is to make the assessment or observation, prior to applying for an Order.
3. The party or counsel who sought the Order shall file at the Court Registry the written Order within two business days of it being made.
4. The party or counsel who sought the Order shall take the necessary steps to ensure that the Accused is admitted as soon as possible at the medical facility at which the Order must be carried out and shall take adequate steps to ensure that the Order is executed.
5. Where the Territorial Court or the Youth Justice Court initiates an Order on its own motion, or where the Accused is self-represented and no counsel has yet been appointed as *amicus curiae*, the obligations mentioned at paragraphs 2 to 5 are carried out as indicated in Appendix "A".

This Direction becomes effective December 1st, 2012 and replaces the Direction dated October 20th, 2011.


Dated this 19th day of November, 2012.



Chief Judge R. D. Gorin



Judge B. E. Schmaltz



Judge C. Gagnon



Judge G.E. Malakoe

Encl. Appendix "A"

CROWN Initiated Psychiatric Assessment Order (accused in custody)

| Step | Court | Crown | Defence | Corrections |
|------|---|--|---|---|
| 1. | | | | Corrections prepares list of medical facilities and practitioners who are willing and able to conduct psychiatric assessments and provides to Crown. Corrections provides copy of list to Court, Crown and Law Society. |
| 2. | | Crown identifies need for psychiatric assessment of the Accused. | | |
| 3. | | Crown contacts Defence indicating that Crown will be requesting the order. | | |
| 4. | | Crown reviews list prepared by Corrections for names of medical facilities and practitioners who can perform assessment. | | |
| 5. | | Crown contacts facilities and practitioners and arranges for bed at facility for the Accused. | | |
| 6. | | Crown prepares draft Psychiatric Assessment Order for presentation to the Court. | | |
| 7. | | Crown provides Defence with copy of draft Psychiatric Assessment Order. | | |
| 8. | | | Defence consents (or does not consent) to Order. | |
| 9. | | Crown presents draft Psychiatric Assessment Order in Court. | | |
| 10. | | | Defence makes submissions regarding need for Order and / or content of Order. | |
| 11. | Court grants (or does not grant) Order. | | | |
| 12. | | Crown serves Order on Corrections (service will be accepted by Legal Division, GNWT), RCMP and medical facility. | | |
| 13. | | | | Corrections and/or RCMP facilitates the transportation of the Accused to and from the medical facility for the purpose of the Order. |
| 14. | | | | Corrections updates list of medical facilities and practitioners as required and distributes to parties listed in Step 1 above. |

DEFENCE Initiated Psychiatric Assessment Order (accused in custody)

| Step | Court | Crown | Defence | Corrections |
|------|---|---|--|---|
| 1. | | | | Corrections prepares list of medical facilities and practitioners who are willing and able to conduct psychiatric assessments and provides to Defence. Corrections provides copy of list to Court, Crown and Law Society. |
| 2. | | | Defence identifies need for psychiatric assessment of the Accused. | |
| 3. | | | Defence contacts Crown indicating that Defence will be requesting the order. | |
| 4. | | | Defence reviews the list prepared by Corrections for names of medical facilities and practitioners who can perform assessment. | |
| 5. | | | Defence contacts facilities and practitioners and arranges for bed at facility for the Accused. | |
| 6. | | | Defence prepares draft Psychiatric Assessment Order for presentation to the Court. | |
| 7. | | | Defence provides Crown with copy of draft Psychiatric Assessment Order. | |
| 8. | | Crown consents (or does not consent) to Order. | | |
| 9. | | | Defence presents draft Psychiatric Assessment Order in Court. | |
| 10. | | Crown makes submissions regarding need for Order and / or content of Order. | | |
| 11. | Court grants (or does not grant) Order. | | | |
| 12. | | | Defence serves Order on Corrections (service will be accepted by Legal Division, GNWT), RCMP and medical facility. | |
| 13. | | | | Corrections and/or RCMP facilitates the transportation of the Accused to and from the medical facility for the purpose of the Order. |
| 14. | | | | Corrections updates list of medical facilities and practitioners as required and distributes to parties listed in Step 1 above. |

COURT Initiated Psychiatric Assessment Order (accused in custody)

| Step | Court | Crown | Defence | Corrections |
|------|--|--|---|---|
| 1. | | | | Corrections determines general availability of medical facility and practitioner to perform assessment; provides this information to Crown and Defence. |
| 2. | Court identifies need for psychiatric assessment of the Accused. | | | |
| 3. | Court directs Crown to prepare interim Order and serve on Corrections (service to be accepted by Legal Division, GNWT). Interim Order contains the following: (1) direction to Corrections to determine general availability of medical facility and practitioner to perform assessment; (2) direction to Corrections to attend Court at next appearance of Accused; (3) adjournment. | | | |
| 4. | | Crown prepares Interim Order and serves on Corrections (service to be accepted by Legal Division, GNWT). | | |
| 5. | | Crown attends Court with submissions on content of proposed Psychiatric Assessment Order. | Defence attends Court with submissions on content of proposed Psychiatric Assessment Order. | Corrections attends Court with submissions on content of proposed Psychiatric Assessment Order. |
| 6. | Court makes Order based on submissions. | | | |
| 7. | | Crown prepares Psychiatric Assessment Order. | | |
| 8. | Court enters and issues Order. | | | |
| 9. | | Crown serves Order on Corrections (service to be accepted by Legal Division, GNWT), RCMP and medical facility. | | |
| 10. | | | | Corrections and/or RCMP facilitates the transportation of the Accused to and from the medical facility for the purpose of the Order. |
| 11. | | | | Corrections updates list of medical facilities and practitioners as required and distributes to parties listed in Step 1 above. |

COURT Initiated Observation Order pursuant to s.31 *Mental Health Act* (accused in custody)

| Step | Court | Crown | Defence | Corrections |
|------|---|---|--|--|
| 1. | Court is of the opinion that there is reason to believe that accused suffers from a mental disorder and identifies need for report on the mental condition of the Accused. | | | |
| 2. | Court directs Crown to prepare interim Order and serve on Corrections (service to be accepted by Legal Division, GNWT). Interim Order contains the following: (1) direction to Corrections to determine general availability of bed at NWT hospital and practitioner to perform examination and produce report; (2) direction to Corrections to attend Court at next appearance of Accused; (3) adjournment. | | | |
| 3. | | Crown prepares Interim Order and serves on Corrections (service to be accepted by Legal Division, GNWT). | | |
| 4. | | | | Corrections determines general availability of bed at NWT hospital and practitioner to perform examination and produce report; provides this information to Crown and Defence. |
| 5. | | Crown attends Court with submissions on content of proposed Observation Order. | Defence attends Court with submissions on content of proposed Observation Order. | Corrections attends Court with submissions on content of proposed Observation Order. |
| 6. | Court makes Order based on submissions. | | | |
| 7. | | Crown prepares Observation Order. | | |
| 8. | Court enters and issues Order. | | | |
| 9. | | Crown serves Order on Corrections, RCMP and NWT hospital. Legal Division, GNWT to accept service on behalf of Corrections and NWT Hospital. | | |
| 10. | | | | Corrections and/or RCMP facilitates the transportation of the Accused to and from the NWT hospital for the purpose of the Order. |