

Defence of
Mental Health Impairment or
Cognitive Impairment
in
Mental Health and Cognitive Impairment Forensic Provisions Act 2020
The Scheme in Three Flow Charts

Prepared by Brian Hancock, Public Defender
and Jennifer Wheeler, Legal Research Officer

Public Defenders Chambers

March 2021

C O N T E N T S

CHART ONE:	Defences and Verdicts in a Criminal Trial
CHART TWO:	Court Orders after ‘Special Verdict’
CHART THREE:	Mental Health Review Tribunal Orders after ‘Special Verdict’

APPLICATION & CURRENCY

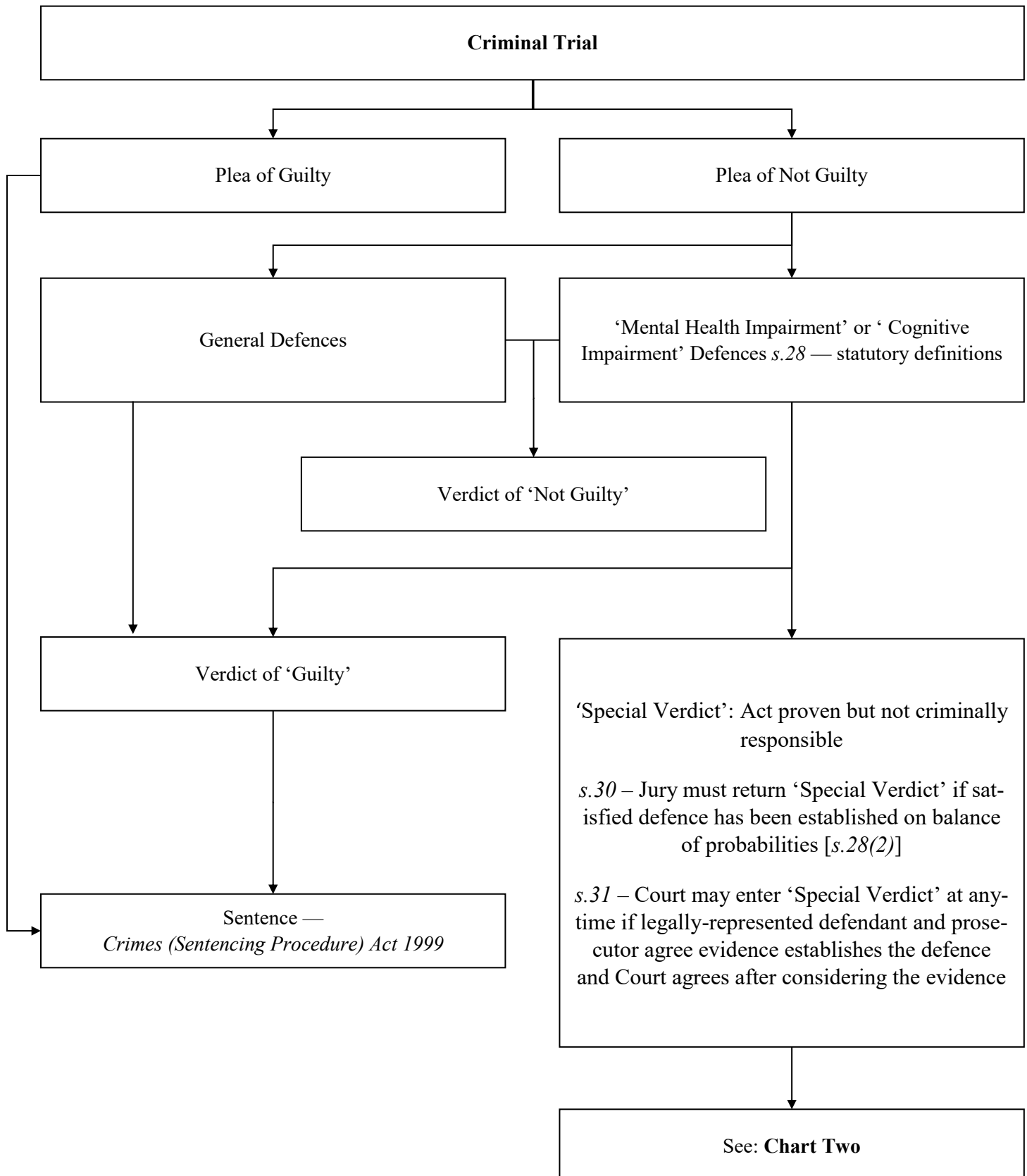
s.27 – These provisions will apply to criminal proceedings in the Supreme Court
(including summary jurisdiction) and criminal proceedings in the District Court

Provisions commence 27 March 2021

Mental Health / Cognitive Impairment Defence: Chart One

Defences and Verdicts in a Criminal Trial

Mental Health and Cognitive Impairment Forensic Provisions Act 2020



Mental Health / Cognitive Impairment Defence: Chart Two

Court Orders on 'Special Verdict' of Act Proven but not Criminally Responsible

Mental Health and Cognitive Impairment Forensic Provisions Act 2020

ORDERS OF COURT AFTER 'SPECIAL VERDICT'

s.33(2) – Before making any order for release Court may request expert report on condition of defendant and whether release would endanger defendant or public

DETENTION

s.33(1) – Court may order:

- a) defendant be remanded in custody until further order is made under this section,
- b) defendant be detained in place and manner court thinks fit until released by due process of law

s.72(1)(c) – Person becomes a forensic patient

RELEASE OR OTHER ORDER

s.33(1) – Court may order:

- c) conditional or unconditional release,
- d) any other appropriate order

s.33(3) – Court cannot release unless satisfied on balance of probabilities safety of person or member of public not seriously endangered

Conditional Release (With Conditions)

s.72(1)(c) – Person does become a forensic patient

Unconditional Release (Without Conditions)

s.72(1)(c) – Person does not become a forensic patient

s.34 – Court must notify Mental Health Review Tribunal if order not made for unconditional release
(see also *s.67* referral after special hearing)

Mental Health / Cognitive Impairment Defence: Chart Three

Mental Health Review Tribunal Orders

On Review of Forensic Patient Referred by Trial Court

After 'Special Verdict' of Act Proven but not Criminally Responsible

Mental Health and Cognitive Impairment Forensic Provisions Act 2020

MENTAL HEALTH REVIEW TRIBUNAL

s.78(c) – Review of Persons Detained or Persons Released with Conditions to be as soon as practicable after finding of 'Special Verdict'.

s.78(d) (f), (g); s.79 – Review to be at any time; or after six months; or as requested

