

Mental Health Act (BC)

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IMPORTANT INFORMATION

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MENTAL HEALTH ACT

[RSBC 1996] CHAPTER 288

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Part 1 – Interpretation

Definitions

1 In this Act:

- "approved home"** means a home selected and approved under the regulations made under this Act;
- "chair"** means the chair appointed under section 24.1 (1) (a);
- "court"** means the Supreme Court;
- "designated facility"** means a Provincial mental health facility, psychiatric unit or observation unit;
- "director"** means a person appointed under the regulations to be in charge of a designated facility and includes a person authorized by a director to exercise a power or carry out a duty conferred or imposed on the director under this Act or the *Patients Property Act*;
- "near relative"** means a grandparent, parent, child, spouse, sibling, half sibling, friend, caregiver or companion designated by a patient and includes the legal guardian of a minor and a representative under an agreement made under the *Representation Agreement Act* and a committee having custody of the person of a patient under the *Patients Property Act*;
- "observation unit"** means a public hospital or a part of it designated by the minister as an observation unit;
- "parent"** includes the spouse of a parent of a person with a mental disorder;
- "patient"** means a person who, under this Act,
 - (a) is receiving care, supervision, treatment, maintenance or rehabilitation, or
 - (b) is received, detained or taken charge of as a person with a mental disorder or as apparently a person with a mental disorder;
- "person with a mental disorder"** means a person who has a disorder of the mind that requires treatment and seriously impairs the person's ability
 - (a) to react appropriately to the person's environment, or
 - (b) to associate with others;
- "physician"** means a medical practitioner;
- "private mental hospital"** means an establishment licensed under section 5;
- "Provincial mental health facility"** means a Provincial mental health facility designated under this Act;
- "psychiatric unit"** means a public hospital or a part of it designated by the minister as a psychiatric unit;
- "public hospital"** means an institution designated as a hospital under section 1 of the *Hospital Act*;
- "resident of British Columbia"** means a person who has resided in British Columbia for a period determined by the Lieutenant Governor in Council;
- "review panel"** means a review panel established under section 24.1 (2);

"society" means a society incorporated or registered under the *Society Act* to establish or operate facilities or services designed for the mental welfare of residents of British Columbia;

"treatment" means safe and effective psychiatric treatment and includes any procedure necessarily related to the provision of psychiatric treatment.

Part 2 – Administration

Establishment of facilities and services

- 2 The Lieutenant Governor in Council may establish and maintain facilities and services for the examination, diagnosis and treatment of persons with a mental disorder and the rehabilitation of patients and for that purpose may, by order, authorize the minister, for the government, to acquire, manage and operate property.

Designation of mental health facilities

- 3 (1) The minister may designate a building or premises as a Provincial mental health facility.
(2) The minister may designate a public hospital or a part of it, not being a Provincial mental health facility, as an observation unit or a psychiatric unit.

Transfer of facilities

- 4 (1) The Lieutenant Governor in Council may by order transfer a Provincial mental health facility or service or a part of it to a society.
(2) An order under subsection (1) must designate the following:
(a) the conditions of the transfer of the property that constitutes the Provincial mental health facility or service or part of it;
(b) the number of persons who are to be appointed to the board of management of the society by the Lieutenant Governor in Council;
(c) the requirements of inspection.
(3) An order under subsection (1) must give any necessary direction for the transfer of officers and employees who are public servants under the *Public Service Act* from the Provincial mental health facility to the society.
(4) An order under subsection (1) may direct that, despite the transfer, the officers and employees continue in the public service of British Columbia.

Licensing of private mental health facilities

- 5 (1) On application, the Lieutenant Governor in Council may license as a private mental health facility
(a) any private hospital licensed under the *Hospital Act*, and
(b) any community care facility licensed under the *Community Care and Assisted Living Act*.
(2) A person must not receive a person with a mental disorder into or cause or permit a person with a mental disorder to remain in a private house for gain or payment, unless the house is licensed under subsection (1).

Persons entitled to service

- 6 Subject to sections 12 and 18, every resident of British Columbia is entitled to receive service and accommodation in the facilities provided under this Act in accordance with this Act and its regulations.

Repealed

- 7 [Repealed 1997-23-23.]

Powers and duties of directors

- 8 A director must ensure
(a) that each patient admitted to the designated facility is provided with professional service, care and treatment appropriate to the patient's condition and appropriate to the function of the designated facility and, for those

purposes, a director may sign consent to treatment forms for a patient detained under section 22, 28, 29, 30 or 42,
(b) that standards appropriate to the function of the designated facility are established and maintained, and
(c) if in charge of a Provincial mental health facility, that the orders and directives of the minister are observed and performed.

Charges for care and treatment

- 9 (1) The Lieutenant Governor in Council may prescribe daily charges for care, treatment and maintenance provided in a Provincial mental health facility.
(2) The Lieutenant Governor in Council may by regulation exempt a class of patient from the prescribed daily charges.

Assessment committee

- 10 (1) The Lieutenant Governor in Council may appoint an assessment committee, consisting of 3 members, who hold office during pleasure and without remuneration.
(2) The assessment committee may prospectively or retrospectively reduce or cancel charges for the care, treatment and maintenance of a patient.

Guardians and committees

- 11 (1) A guardian, committee or other person liable for payment for a patient's care, treatment or maintenance must, on demand from the director of a Provincial mental health facility in which the patient is or has been receiving care, treatment or maintenance, make payments to the director in accordance with the rates set under this Act.
(2) The director may demand from a guardian, committee or other person liable to pay for a patient's care, treatment or maintenance any sum due at any time and may in default of payment sue on behalf of the government for the recovery of the sum in a court of competent jurisdiction.
(3) An action under this section must be taken in the name of the director.

Admissions from penitentiaries

- 12 The director of every Provincial mental health facility must ensure that no person with a mental disorder is admitted into any Provincial mental health facility from a penitentiary, prison, jail, reformatory or institution under the jurisdiction and administration of Canada unless the government of Canada, by or through an officer having authority to act on its behalf, undertakes to pay all charges for care, treatment and maintenance of that person.

Reciprocal arrangements with other provinces

- 13 With the approval of the Lieutenant Governor in Council, the minister may, on behalf of the government, enter into or cancel a reciprocal arrangement with the government of any other province of Canada for the assumption of all or part of the charges incurred by a resident of one province hospitalized in a public mental hospital or provincial mental health facility in another.

Reciprocal arrangements with Canada

- 14 The Lieutenant Governor in Council may, on behalf of the government, enter into or cancel an agreement with Canada for the sharing of costs of care and treatment of persons with a mental disorder.

Transportation of patients

- 15 A person who is being transported to a designated facility for admission and who is not detained or being transported under the *Criminal Code* or under section 29 must be kept separate from any person who is detained or being transported under the *Criminal Code* or under section 29.

Protection from liability for certain actions

- 16 A person is not liable in damages as the result of doing any of the following in good faith and with reasonable care:
(a) making an application or laying an information;

- (b) requesting that a person be admitted to, or admitted to and detained in, a designated facility;
- (b.1) if the person is the director, admitting a patient to the designated facility under section 20 (1) (a) (ii) on the basis of a physician's opinion or continuing the admission and treatment of the patient on the basis of a report made under section 20 (4);
- (b.2) if the person is the director, admitting a patient to the designated facility and detaining the patient on the authority of a medical certificate or a warrant or report or determination made under section 24 or 25;
- (b.3) if the person is the director, authorizing treatment or signing a consent to treatment form;
- (c) signing a medical certificate or making a report if the person is a physician;
- (d) making an order if the person is a justice of the court;
- (e) issuing a warrant if the person is a judge of the Provincial Court, a justice of the peace or a director;
- (f) apprehending, transporting or taking charge of a person on the authority of
 - (i) a medical certificate, or
 - (ii) if a peace officer, a warrant;
- (f.1) if a police officer or constable, apprehending a person under section 28 (1);
- (g) [Repealed 2004-45-116.]
- (h) if a director, releasing a patient under section 37, transferring or accepting the transfer of a patient under section 35 or 38 or recalling a patient under section 39 in a manner not contrary to the regulations;
- (i) providing in a manner not contrary to the regulations the care, supervision, treatment, maintenance or rehabilitation of a patient on leave or transferred to an approved home under section 37 or 38.

Offence

- 17** (1) A person commits an offence punishable under the *Offence Act* who
- (a) assists a patient to leave or to attempt to leave a designated facility without proper authority,
 - (b) does or omits to do an act to assist a patient in leaving or attempting to leave a designated facility without proper authority, or
 - (c) incites or counsels a patient to leave a designated facility without proper authority.
- (2) A person employed in a designated facility or a private mental hospital, or any other person having charge of a patient, who ill treats, assaults or wilfully neglects a patient commits an offence punishable under the *Offence Act*.

Part 3 — Admission and Detention of Patients

When persons are not to be admitted

- 18** Despite anything in this Act, a director or person who has authority to admit persons to a Provincial mental health facility must not admit a person to a Provincial mental health facility if
- (a) suitable accommodation is not available within the Provincial mental health facility for the care, treatment and maintenance of the patient, or
 - (b) in the opinion of the director or person who has authority to admit persons to the Provincial mental health facility, the person is not a person with a mental disorder or is a person who, because of the nature of his or her mental disorder, could not be cared for or treated appropriately in the facility.

Admission of female person

this information is provided for training reference only...legislation can change without notice

- 19 The person who requests or applies for the admission of a female person to a Provincial mental health facility must arrange for her to be accompanied by a near relative or a female person between the time of the request or application and her admission to a Provincial mental health facility.

Voluntary admissions

- 20 (1) A director may admit any person to the designated facility
- (a) if the person
 - (i) has reached 16 years of age and requests admission, or
 - (ii) is under 16 years of age and a parent or guardian of the person requests that the person be admitted, and
 - (b) if the director is satisfied that the person has been examined by a physician who is of the opinion that the person is a person with a mental disorder.
- (2) A patient admitted under this section who is under 16 years of age must, unless discharged from the designated facility, be examined at the following times by a physician authorized for the purpose by the director:
- (a) within each of the first 2 months following the date the patient was admitted;
 - (b) within 3 months of the second examination required by paragraph (a);
 - (c) within 6 months of the examination required by paragraph (b);
 - (d) within each successive 6 month period following the examination required by paragraph (c).
- (3) If the physician who examines a patient under subsection (2) is of the opinion that the patient is not a person with a mental disorder, the director must discharge that patient.
- (4) If the physician who examines a patient under subsection (2) is of the opinion that the patient is a person with a mental disorder, the physician must record a written report of the examination and include in it the reasons for the opinion.
- (5) A nurse in charge of a ward in a designated facility must
- (a) ensure that each patient in the ward who was admitted under this section is enabled to communicate without delay to the director any desire that the patient may form to leave the designated facility, and
 - (b) on learning that a patient in the ward who was admitted under this section desires to leave the designated facility, promptly notify the director of that desire.
- (6) A patient admitted under this section must be discharged by the director
- (a) if the patient has reached 16 years of age and the director is notified in any manner that the patient desires to be discharged,
 - (b) if the patient is under 16 years of age and the director is notified in any manner that a parent or guardian requests that the patient be discharged, or
 - (c) if the patient is under 16 years of age and the director is notified by a physician, authorized by the director for the purpose of this section, that the patient has been examined by the physician and found not to be a person with a mental disorder.
- (7) Subsections (5) and (6) do not apply if the requirements for detention of the patient under section 22 (1) have been fulfilled.
- (8) A person who has reached 16 years of age and who has been admitted to a designated facility has, despite any rule of law relating to minors, the capacity to make the request and to make an agreement for payment for maintenance and treatment in the designated facility and to authorize the person's treatment in the designated facility.

Review panel for person under 16 years of age

- 21 (1) If a patient admitted to a designated facility under section 20 (1) (a) (ii) desires to leave the facility and is under 16 years of age, section 25 applies as though the patient had been admitted under section 22 if
- (a) the patient requests the discharge, and

(b) no person entitled to apply under section 20 (1) (a) (ii) for the patient's admission requests the discharge under section 20 (6) (b).

(2) For the purposes of subsection (1) (b), the director must discharge the patient if the patient is found not to be a person with a mental disorder.

Involuntary admissions

22 (1) The director of a designated facility may admit a person to the designated facility and detain the person for up to 48 hours for examination and treatment on receiving one medical certificate respecting the person completed by a physician in accordance with subsections (3) and (4).

(2) On receipt by the director of a second medical certificate completed by another physician in accordance with subsections (3) and (5) respecting the patient admitted under subsection (1), the detention and treatment of that patient may be continued beyond the 48 hour period referred to in subsection (1).

(3) Each medical certificate under this section must be completed by a physician who has examined the person to be admitted, or the patient admitted, under subsection (1) and must set out

(a) a statement by the physician that the physician

- (i) has examined the person or patient on the date or dates set out, and
- (ii) is of the opinion that the person or patient is a person with a mental disorder,

(b) the reasons in summary form for the opinion, and

(c) a statement, separate from that under paragraph (a), by the physician that the physician is of the opinion that the person to be admitted, or the patient admitted, under subsection (1)

- (i) requires treatment in or through a designated facility,
- (ii) requires care, supervision and control in or through a designated facility to prevent the person's or patient's substantial mental or physical deterioration or for the protection of the person or patient or the protection of others, and
- (iii) cannot suitably be admitted as a voluntary patient.

(4) A medical certificate referred to in subsection (1) is not valid unless both it and the examination it describes are completed not more than 14 days before the date of admission.

(5) A second medical certificate referred to in subsection (2) is not valid unless both it and the examination it describes are completed within the 48 hour period following the time of admission.

(6) A medical certificate completed under subsection (1) in accordance with subsections (3) and (4) is authority for anyone to apprehend the person to be admitted, and for the transportation, admission and detention for treatment of that person in or through a designated facility.

(7) A patient admitted under subsection (1) to an observation unit must be transferred to a Provincial mental health facility or psychiatric unit within the prescribed period after a second medical certificate is received under subsection (2) by the director of the observation unit unless the patient is

(a) discharged, or

(b) released on leave or transferred to an approved home under section 37 or 38.

Duration of detention

23 A patient admitted under section 22 may be detained for one month after the date of the admission, and the patient must be discharged at the end of that month unless the authority for the detention is renewed in accordance with section 24.

Review of detention

24 (1) Unless the patient has previously been discharged, authority for the detention of a patient may be renewed under this section as follows:

- (a) from the end of the period referred to in section 23 for a further period of one month;
- (b) from the end of any period of renewal under paragraph (a) for a further period of 3 months;
- (c) from the end of any period of renewal under paragraph (b) for a further period, or further successive periods, of 6 months.

(2) During

- (a) every one month period referred to in section 23,
- (b) every further one month period referred to in subsection (1) (a), and
- (c) the last month of every 3 month or 6 month period referred to in subsection (1) (b) or (c),

the director or a physician authorized by the director must examine the patient and either discharge the patient or record a written report of the examination and include in it the reasons of the director or physician for concluding that section 22 (3) (a) (ii) and (c) continues to describe the condition of the patient.

(2.1) An examination under subsection (2) must include

- (a) consideration of all reasonably available evidence concerning the patient's history of mental disorder including
 - (i) hospitalization for treatment, and
 - (ii) compliance with treatment plans following hospitalization, and
- (b) an assessment of whether there is a significant risk that the patient, if discharged, will as a result of mental disorder fail to follow the treatment plan the director or physician considers necessary to minimize the possibility that the patient will again be detained under section 22.

(2.2) If an examination under subsection (2) concludes that section 22 (3) (a) (ii) and (c) continues to describe the condition of the patient, the director or physician must renew under subsection (2) the authority for the detention of that patient.

(3) The written report referred to in subsection (2) is a renewal of the authority for the detention of the patient referred to in that subsection.

Board and review panels

24.1 (1) The minister may establish a board consisting of the following members appointed after a merit based process:

- (a) a chair appointed by the minister;
- (b) members appointed by the minister after consultation with the chair.

(2) From among the members of the board, the chair may establish one or more review panels to conduct hearings and for each review panel may

- (a) specify the number of its members,
- (b) appoint its members, and
- (c) designate a member to chair the panel.

(3) A review panel must include

- (a) a medical practitioner,
- (b) a member in good standing of the Law Society of British Columbia or a person with equivalent training, and
- (c) a person who is not a medical practitioner or a lawyer.

(4) For matters heard under this Act by review panels, the chair may

- (a) schedule the times the matters will be heard,
- (b) assign a matter for hearing to a review panel,
- (c) reassign a matter for hearing from one review panel to another review panel, or
- (d) schedule 2 or more review panels to hear separate matters at the same time.

Application of Administrative Tribunals Act

24.2 Sections 1 to 10, 11, 13 to 15, 18 to 20, 26 (5) to (7) and (9), 27, 30, 32, 35, 36, 38, 39, 40 (1) and (2), 44, 46.2, 48, 49, 55 to 57, 59, 60 (a) and (b) and 61 of the *Administrative Tribunals Act* apply to the board and members of review panels.

Power to compel witnesses and order disclosure

- 24.3** (1) At any time before or during a hearing, but before its decision, a review panel may make an order requiring a person
- (a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an application, or
 - (b) to produce for the review panel or a party a document or other thing in the person's possession or control, as specified by the review panel, that is admissible and relevant to an issue in an application.
- (2) The review panel may apply to the court for an order
- (a) directing a person to comply with an order made by the review panel under subsection (1), or
 - (b) directing any directors and officers of a person to cause the person to comply with an order made by the review panel under subsection (1).

Hearing by review panel

- 25** (1) A patient detained under section 22 is entitled, at the request of the patient or a person on the patient's behalf, to a hearing by a review panel
- (a) within a prescribed time after the commencement of a one month period, or further one month period, referred to in section 23 or in section 24 (1) (a),
 - (b) within a prescribed time after the commencement of a 3 month period referred to in section 24 (1) (b), or
 - (c) during any 6 month period referred to in section 24 (1) (c), within a prescribed time after 90 days after the conclusion of any previous hearing.
- (1.1) If a patient has been on leave or transferred to an approved home under section 37 or 38 for 12 or more consecutive months and a hearing under this section has not been requested or held within that period, the chair appointed under section 24.1 (1) (a) must review the patient's treatment record and, if satisfied from this record that there is a reasonable likelihood that the patient would be discharged following a hearing under this section, must order that a hearing under this section be held.
- (2) The purpose of a hearing under this section is to determine whether the detention of the patient should continue because section 22 (3) (a) (ii) and (c) continues to describe the condition of the patient.
- (2.1) A hearing by a review panel must include
- (a) consideration of all reasonably available evidence concerning the patient's history of mental disorder including
 - (i) hospitalization for treatment, and
 - (ii) compliance with treatment plans following hospitalization, and
 - (b) an assessment of whether there is a significant risk that the patient, if discharged, will as a result of mental disorder fail to follow the treatment plan the director or a physician authorized by the director considers necessary to minimize the possibility that the patient will again be detained under section 22.
- (2.2) Despite any defect or apparent defect in the authority for the initial or continued detention of a patient detained under section 22, a review panel must conduct a hearing and determine whether the detention should continue because the factors in section 22 (3) (a) (ii) and (c) continue to describe the condition of the patient.
- (2.3) A review panel may proceed with a hearing
- (a) despite a defect or apparent defect in any form required under this Act, and
 - (b) whether or not the patient has been transferred under section 22 (7) of this Act.

- (2.4) A person who satisfies the review panel that he or she has a material interest in or knowledge of matters relevant to the hearing may give evidence or make submissions at the hearing.
- (2.5) Unless the review panel orders otherwise, the hearing must be held in private.
- (2.6) The chair of a review panel may
- (a) exclude the patient from attendance at the hearing or any part of it, but only if the chair of the review panel is satisfied that the exclusion is in the best interests of the patient, or
 - (b) make orders respecting the taking, hearing or reproduction of evidence as the chair of the review panel considers necessary to protect the interests of the patient or any witness.
- (2.7) At any time before a hearing begins, a patient may withdraw the request for the hearing.
- (2.8) The review panel must issue a determination described in subsection (2) no later than 48 hours after the hearing is completed and must issue its reasons no later than 14 days after the determination has been issued.
- (2.9) After a review panel has made a determination referred to in subsection (2.8), the chair of the review panel must, without delay, deliver a copy of the determination to the director and to the patient or the patient's counsel or agent, and if the patient is to be discharged the director must discharge the patient.
- (3) The chair appointed under section 24.1 (1) (a) may shorten the time period in subsection (1) (c) if
- (a) the chair considers it to be in the best interests of the patient, or
 - (b) new information relative to the patient's detention has become available.
- (4) [Repealed 2004-45-118.]
- (4.1) If the hearing under subsection (2) concludes that section 22 (3) (a) (ii) and (c) continues to describe the condition of the patient, the review panel must determine under subsection (2) that the detention of the patient be continued.
- (5) to (8) [Repealed 2004-45-118.]
- (9) Records of the proceedings of a hearing must be kept by the review panel office for at least one year.

Amendment to final decision

- 25.1** (1) If a party applies or on the review panel's own initiative, the review panel may amend a final decision to correct any of the following:
- (a) a clerical or typographical error;
 - (b) an accidental or inadvertent error, omission or other similar mistake;
 - (c) an arithmetical error made in a computation.
- (2) Unless the review panel determines otherwise, an amendment under subsection (1) must not be made more than 30 days after all parties have been served with the final decision.
- (3) Within 30 days of being served with the final decision, a party may apply to the review panel for clarification of the final decision and the review panel may amend the final decision only if the review panel considers that the amendment will clarify the final decision.
- (4) The review panel may not amend a final decision other than in the circumstances described in subsections (1) to (3).
- (5) This section must not be construed as limiting the review panel's ability, on its own initiative or at the request of a party, to reopen an application in order to cure a jurisdictional defect.

Repealed

26–27 [Repealed 1998-35-14.]

Emergency procedures

- 28** (1) A police officer or constable may apprehend and immediately take a person to a physician for examination if satisfied from personal observations, or information received, that the person

- (a) is acting in a manner likely to endanger that person's own safety or the safety of others, and
- (b) is apparently a person with a mental disorder.
- (2) A person apprehended under subsection (1) must be released if a physician does not complete a medical certificate in accordance with section 22 (3) and (4).
- (3) Anyone may apply to a judge of the Provincial Court or, if no judge is available, to a justice of the peace respecting a person if there are reasonable grounds to believe that section 22 (3) (a) (ii) and (c) describes the condition of the person.
- (4) On application under subsection (3), the judge or justice may issue a warrant in the prescribed form if satisfied that
 - (a) the applicant has reasonable grounds to believe that subsection (3) applies to the person respecting whom the application is made, and
 - (b) section 22 cannot be used without unreasonable delay.
- (5) A warrant issued under subsection (4) is authority for the apprehension of the person to be admitted and for the transportation, admission and detention of that person for treatment in or through a designated facility.
- (6) On being admitted as described in subsection (5), a patient must be discharged at the end of 48 hours detention unless the director receives 2 medical certificates as described in section 22 (3).
- (7) On the director receiving 2 medical certificates as described in subsection (6), section 22 (6) and (7) applies to the patient.

Prisoners and youth custody centre inmates

- 29** (1) On receiving 2 medical certificates completed in accordance with section 22 concerning the mental condition of a person imprisoned or detained in
 - (a) a correctional centre,
 - (b) a youth custody centre, or
 - (c) a prison or lockup operated by a police force or police department or by a designated policing unit or designated law enforcement unit, as those terms are defined in section 1 of the *Police Act*,the Lieutenant Governor in Council may order the removal of the person to a Provincial mental health facility.
- (2) When an order is made under subsection (1), the person in charge of the correctional centre, youth custody centre, prison or lockup must, in accordance with the order, cause the person to be transported to the Provincial mental health facility named in the order and send to the director of the Provincial mental health facility copies of the medical certificates.
- (3) A person transported to a Provincial mental health facility under subsection (2) must be detained in that or any other Provincial mental health facility the Lieutenant Governor in Council may order until the person's complete or partial recovery or until other circumstances justifying the person's discharge from the Provincial mental health facility are certified to the satisfaction of the Lieutenant Governor in Council, who may then order the person
 - (a) back to imprisonment or detention if then liable to imprisonment or detention, or
 - (b) to be discharged.
- (4) On receiving 2 medical certificates completed in accordance with section 22 concerning the mental condition of a person imprisoned or detained in
 - (a) a correctional centre,
 - (b) a youth custody centre, or
 - (c) a prison or lockup operated by a police force or police department or by a designated policing unit or designated law enforcement unit, as those terms are defined in section 1 of the *Police Act*,the person in charge of the correctional centre, youth custody centre, prison or lockup may authorize the transfer of the person to a Provincial mental health facility.

- (5) The director of a Provincial mental health facility may admit to the facility the person authorized to be transferred under subsection (4) if the director receives copies of the 2 medical certificates from the person in charge of the correctional centre, youth custody centre, prison or lockup.
- (6) A person who is authorized to be transferred and is admitted under subsection (4) must be detained in the Provincial mental health facility until the person's complete or partial recovery, or until other circumstances justifying the person's discharge from the facility are certified to the satisfaction of the director, who must,
- (a) if the person is not liable to further imprisonment or detention, discharge the person, or
 - (b) if the person is liable to further imprisonment or detention, return the person to the correctional centre, youth custody centre, prison or lockup from which the person was transferred.
- (7) If a person is detained in a Provincial mental health facility under subsection (3) or (6), the director may authorize that the person receive care and psychiatric treatment appropriate to the person's condition.
- (8) Sections 23 to 25 apply to the detention of a patient admitted under subsection (4) and subsection (6) (a) or (b) applies to a patient who is discharged under sections 23 to 25.
- (9) Section 33 applies to the transfer or admission of a person to a Provincial mental health facility under subsection (4), and subsection (6) (a) or (b) applies to a patient who is discharged under section 33.

Detention under *Criminal Code*

- 30 A person who, under the *Criminal Code*, is found not criminally responsible on account of mental disorder or is found unfit on account of mental disorder to stand trial, and who is ordered to be detained in a Provincial mental health facility, must receive care and treatment appropriate to the condition of the person as authorized by the director.

Deemed consent to treatment and request for a second opinion

- 31 (1) If a patient is detained in a designated facility under section 22, 28, 29, 30 or 42 or is released on leave or is transferred to an approved home under section 37 or 38, treatment authorized by the director is deemed to be given with the consent of the patient.
- (2) A patient to whom subsection (1) applies, or a person on the patient's behalf, may request a second medical opinion on the appropriateness of the treatment authorized by the director once in each of the following periods:
- (a) a one month period referred to in section 23 or 24 (1) (a);
 - (b) a 3 month period referred to in section 24 (1) (b);
 - (c) a 6 month period referred to in section 24 (1) (c).
- (3) On receipt of a second medical opinion prepared as described in subsection (2), the director must consider whether changes should be made in the authorized treatment for the patient and authorize changes the director considers should be made.

Direction and discipline of patients

- 32 Every patient detained under this Act is, during detention, subject to the direction and discipline of the director and the members of the staff of the designated facility authorized for that purpose by the director.

Application to court for discharge

- 33 (1) In this section:

"certificate" means

- (a) a request in writing made under section 20 (1) (a) (ii), or a report made under section 20 (4) respecting a patient admitted under section 20 (1) (a) (ii),
- (b) a medical certificate completed in accordance with section 22 (1) or (2), or a report or determination made under section 24 or 25, or
- (c) a warrant under section 28, 39 or 41;

"patient" means

- (a) a person whose admission is requested, or a patient who is admitted, under section 20 (1) (a) (ii),

(b) a patient who is detained under section 22, 28, or 42 or whose detention is renewed or continued under section 24 or 25, or

(c) a person or patient for whom a medical certificate has been completed as required under section 22 (1), or a warrant has been issued under section 28, 39 or 41, and who has not been apprehended and admitted or returned to a designated facility in consequence;

"psychiatrist" means a physician who is recognized by the College of Physicians and Surgeons of British Columbia as being a specialist in psychiatry.

(2) A patient, or a person on behalf of the patient, who believes that there is not sufficient reason or legal authority for a certificate respecting the patient may apply to the court for an order under subsection (8) (a), (b) or (c).

(3) Nothing in this section affects the right of a patient or other person to apply for a writ of habeas corpus or other prerogative writ.

(4) On hearing an application under subsection (2), the court may review the evidence, including

(a) all records relating to the patient's admission to or detention in or through a designated facility, and

(b) further evidence it considers relevant.

(5) On hearing an application under subsection (2) concerning a patient detained under this Act, the court must

(a) consider all reasonably available evidence concerning the patient's history of mental disorder including

(i) hospitalization for treatment, and

(ii) compliance with treatment plans following hospitalization, and

(b) make an assessment of whether there is a significant risk that the patient, if discharged, will as a result of mental disorder fail to follow the treatment plan the director or a physician authorized by the director considers necessary to minimize the possibility that the patient will again be detained under section 22.

(6) If the review under subsection (4) concludes that section 22 (3) (a) (ii) and (c) continues to describe the condition of the patient, the court must conclude that there is sufficient reason for the certificate.

(7) If satisfied that there is sufficient reason and legal authority for the certificate, the court must reject the application made under subsection (2).

(8) If not satisfied that there is sufficient reason or legal authority for the certificate, the court may make any of the following orders:

(a) that the patient not be apprehended, transported or admitted to a designated facility under the certificate that gave rise to the application under this section;

(b) that the patient not be apprehended, transported or admitted to a designated facility under a certificate made before the date of the order;

(c) that the patient be discharged from the designated facility;

(d) that within 10 days the director named in the order must obtain a report from a psychiatrist, stating

(i) that the psychiatrist has examined the patient at the director's request on the dates stated in the report,

(ii) whatever further information the psychiatrist considers relevant, and

(iii) whether or not, in the opinion of the psychiatrist for the reasons stated in the report, the patient

(A) is a person with a mental disorder,

(B) requires treatment in or through a designated facility,

(C) requires care, supervision and control in or through a designated facility to prevent the patient's substantial mental or physical deterioration or for the protection of the patient or the protection of others, and

- (D) cannot suitably be admitted as a voluntary patient;
- (e) that the patient, if not detained in a designated facility at the time an order under paragraph (d) is made, attend before the psychiatrist for examination at a time and place appointed by the director.
- (9) On receiving a report made under an order under subsection (8) (d), the court must
 - (a) reject the application made under subsection (2) if the court is satisfied that there is sufficient reason and legal authority for the certificate, and
 - (b) make an order under subsection (8) (a), (b) or (c) if the court is satisfied that there is not sufficient reason or legal authority for the certificate.
- (10) If an order is made under subsection (8) (c), the director must immediately discharge the patient.

Notice to involuntary patient

- 34** (1) The director must give a notice to a patient on
 - (a) the patient's detention in or through a designated facility under section 22 (1), 28 (5), 29 or 42 (1);
 - (b) the patient's transfer to a designated facility under section 35;
 - (c) a renewal of the patient's detention under section 24.
- (2) A notice under this section must be given in writing in the prescribed form and orally and must inform the patient of the following:
 - (a) the name and location of the designated facility in or through which the patient is detained;
 - (b) the right set out in section 10 of the *Canadian Charter of Rights and Freedoms*;
 - (c) the provisions of sections 23 to 25, 31 and 33;
 - (d) any other prescribed information.
- (3) If the director is satisfied that a patient was unable to understand the information in the notice at the time the notice was given to the patient, the director must give the notice again to the patient as soon as the director considers that the patient is capable of understanding the information in the notice.

Notice to patient under 16 years of age

- 34.1** (1) The director must give a notice to a patient on
 - (a) the patient's admission to a designated facility under section 20 (1) (a) (ii), or
 - (b) the making of a report under section 20 (4) in respect of the patient's admission under section 20 (1) (a) (ii).
- (2) A notice under this section must be given in writing in the prescribed form and orally and must inform the patient of the following:
 - (a) the name and location of the designated facility to which the patient is admitted;
 - (b) the right set out in section 10 of the *Canadian Charter of Rights and Freedoms*;
 - (c) the provisions of sections 21, 25, 31 and 33;
 - (d) any other prescribed information.
- (3) If the director is satisfied that a patient was unable to understand the information in the notice at the time the notice was given to the patient, the director must give the notice again to the patient as soon as the director considers that the patient is capable of understanding the information in the notice.

Advice to near relative

- 34.2** (1) The director must send to a near relative of the patient a written notice setting out the patient's rights under sections 21, 23, 24, 25 and 33 immediately after
 - (a) the admission of the patient to the designated facility under section 20 (1) (a) (ii), or
 - (b) the admission and detention of the patient in the designated facility under section 22 (1) or 28 (5).

- (2) The director must give notice in the prescribed manner to a near relative of a patient immediately after
 - (a) discharging the patient from the designated facility, or
 - (b) receipt of a request under section 25 (1) from someone who is not a near relative of the patient.
- (3) On making an order under section 25 (1.1), the chair must give a notice of the order in the prescribed manner to a near relative of the patient.
- (4) If the director or chair has no information about the identity of the patient's near relatives, this section is sufficiently complied with if the notice is sent to the Public Guardian and Trustee.

Transfers

- 35 (1) If a transfer to another designated facility is considered beneficial to the welfare of a patient, the director may, by agreement with the director of the other designated facility, authorize the transfer and transfer the patient.
 - (2) Despite subsection (1), if a person detained under section 29 is transferred, the transfer must be to a Provincial mental health facility and the transfer may only be made
 - (a) with the approval of the Lieutenant Governor in Council, or
 - (b) if the person is detained under section 29 (4) and (5), with the authorization of the person in charge of the correctional centre, youth custody centre, prison or lockup from which the person was transferred.
 - (3) A director to whose designated facility a patient is transferred under this section has authority to detain the patient and the time limited by this Act for the doing of any thing runs as if the patient's detention were continuous in or through one designated facility.

Discharge

- 36 (1) The director may discharge a patient from the designated facility.
 - (2) An application, request, medical certificate or warrant made or issued under this Act before the discharge of the patient with respect to whom it is made or issued is not effective after the discharge for the purposes of this Act.
 - (3) If a person is discharged from a designated facility other than by the operation of section 41 (3), the director must, on receiving an application by or on behalf of the person, provide the person with a certificate of discharge, signed by the director, in the prescribed form.

Leave

- 37 Subject to section 40 and the regulations, if the director considers that leave would benefit a patient detained in the designated facility, the director may release the patient on leave from the designated facility providing appropriate support exists in the community to meet the conditions of the leave.

Approved homes

- 38 Subject to section 40 and the regulations, if the director considers that the transfer would benefit a patient detained in the designated facility, the director may transfer the patient to an approved home.

Authority to detain continues despite leave or transfer

- 39 (1) The release of a patient on leave or the patient's transfer to an approved home under section 37 or 38 does not, of itself, impair the authority for the patient's detention under this Act and that authority may be continued, according to the same procedures and to the same extent, as if the patient were detained in a designated facility.
 - (2) Subject to the regulations, a patient who is on leave or has been transferred to an approved home under section 37 or 38 may, if the conditions of the patient's leave or transfer are not being met, be recalled
 - (a) to the designated facility from which the patient was released or transferred, or
 - (b) to another designated facility, if the transfer to that facility is authorized and agreed to under section 35.

- (3) Subject to the regulations, the director of a designated facility who recalls a patient under subsection (2), or to which a patient is recalled under subsection (2) as a result of a transfer under section 35, may issue a warrant in the prescribed form for the patient's apprehension and transportation to the designated facility to which the patient is recalled.
- (4) A patient who is recalled under subsection (2) while on leave that has lasted 6 or more consecutive months is deemed, for the purposes of sections 23 to 25, to have been admitted under section 22 (1) on the date of return to a designated facility as a result of the recall.

Exception to rules about leave and approved homes

- 40** Except as provided by order of the Lieutenant Governor in Council, sections 37 and 38 do not apply to a patient
- (a) who was admitted to a Provincial mental health facility under section 29 or under the *Criminal Code* and remains liable to imprisonment or detention in a jail, prison or training school, or
 - (b) who is detained in a Provincial mental health facility under the *Criminal Code*.

Unauthorized absences

- 41** (1) If a patient detained in a designated facility leaves the designated facility without having been released on leave or transferred to an approved home under section 37 or 38 or discharged under this Act, the director may, within 60 days after the date on which the patient leaves the facility, issue a warrant in prescribed form for the apprehension of the patient and the patient's transportation to the designated facility and the warrant is authority for the apprehension of the patient and the patient's transportation to the designated facility.
- (2) If a warrant is issued under subsection (1), all peace officers and other persons designated by the director must give any assistance required in the apprehension of the patient or the transportation of the patient to the designated facility.
- (3) Except as provided in subsection (4), after the end of 60 days from the date the patient leaves the designated facility under the circumstances set out in subsection (1), the patient is deemed to have been discharged from the designated facility.
- (4) If a patient detained in a designated facility leaves the designated facility under the circumstances set out in subsection (1) while charged with an offence or liable to imprisonment or considered by the director to be likely to endanger the patient's safety or the safety of others, even though the period of 60 days has elapsed since the date the patient left the designated facility, the director may issue a warrant in the prescribed form for the patient's apprehension and transportation to a designated facility and the warrant is authority for the patient's apprehension and transportation to the designated facility.
- (5) If a patient escapes during the course of transfer to a designated facility, both the director of the designated facility to which the patient was being transferred and the director of the designated facility from which the patient was being transferred may issue a warrant under this section.
- (6) A patient detained in a designated facility who leaves the designated facility under the circumstances set out in subsection (1) may be apprehended for the purpose of returning the patient to the facility, within 48 hours from the time the patient leaves, even though no warrant has been issued under this section.

Transfer from another province

- 42** (1) If a director receives a written request from an appropriate mental health authority of another province with respect to a person who, because of being a person with a mental disorder, is detained in a hospital or mental health facility in that other province, the director may authorize the taking into custody and transportation of the person to the designated facility and may admit that person.
- (2) On being admitted under subsection (1), the patient must be discharged at the end of 48 hours detention unless the director receives 2 medical certificates as described in section 22 (3).

(3) On the director receiving 2 medical certificates as described in subsection (2), section 22 (6) and (7) applies to the patient.

Part 4 – Regulations

Power to make regulations

43 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing forms, including the form of the warrant under section 28, 39 or 41;
- (b) governing the selection, approval and operation of approved homes and the payment of the cost of the maintenance of the patients in them;
- (c) governing the establishment, development, maintenance and management of services and designated facilities for the examination, diagnosis and treatment of persons with a mental disorder and the rehabilitation of patients;
- (d) governing the protection and custody of patients detained in designated facilities;
- (d.1) governing the reports to be made concerning patients detained in designated facilities;
- (e) governing the transfer of patients between designated facilities or to and from reciprocating jurisdictions;
- (f) concerning the acquisition and management of property under this Act;
- (g) prescribing standards for buildings or premises that are designated facilities and for the furnishings and equipment of these buildings or premises;
- (h) concerning the establishment and operation of a mental health clinic or service by a society, the standards of care to be observed in the clinic or in the provision of the service, their inspection and the rates or fees charged by the society;
- (i) concerning the licensing of premises as private mental hospitals, the conditions of the licence and the designation of the provisions of this Act that are applicable to private mental hospitals;
- (j) concerning follow up and after care services and rehabilitation programs for patients;
- (k) governing boarding home care services;
- (l) concerning the admission of patients to designated facilities or a particular designated facility, the care, treatment and maintenance of patients and the discharge of patients;
- (m) prescribing rules respecting the conduct of hearings, including the practice and procedure, under sections 23 to 25;
- (n) prescribing the period referred to in section 22 (7);
- (o) governing the release and recall of patients on leave or the transfer and recall of patients to or from approved homes, including the care, supervision, treatment, maintenance or rehabilitation of patients on leave or transferred to approved homes;
- (p) governing the appointment of directors;
- (q) governing the preparation of second medical opinions under section 31.

Schedule

[Schedule repealed 1998-35-20.]

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