

# BC's Mental Health Act in Plain Language

A project of the Canadian Mental Health Association, BC Division  
Consumer Development Project



CANADIAN MENTAL  
HEALTH ASSOCIATION

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L'ASSOCIATION CANADIENNE  
POUR LA SANTÉ MENTALE  
BC Division

Disclaimer: This Guide is intended for use as general information and is prepared for purposes of convenience only. It is not to be relied upon as legal advice or legal authority. If you have inquiries as to legal proceedings, or if you would like more detailed information regarding legislation, you should consult a lawyer.

*BC's Mental Health Act in Plain Language* was written and prepared by the Canadian Mental Health Association, BC Division Consumer Development Project in Kelowna, BC.

Written by Charlotte Sinclair and Shelagh Turner  
Layout and Design by Mykle Ludvigsen

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CMHA BC Division  
1200-1111 Melville Street  
Vancouver, BC  
V6E 3V6  
Tel: 604-688-3234  
Fax: 604-688-3236  
Email: [office@cmha-bc.org](mailto:office@cmha-bc.org)  
Web: [www.cmha-bc.org](http://www.cmha-bc.org)

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## Who are we?

The Canadian Mental Health Association, BC Division is a provincial charity that, for the past 50 years, has worked to promote the mental health of all British Columbians and change the way we view and treat mental illness in BC.

We are part of a national association with over 80 years of experience. In BC, we have a network of 20 branches across the province that provide direct service support for people with a mental illness or a mental health problem including public education, rehabilitation services such as: supported housing, supported employment and education, clubhouses and community education.

At BC Division, our staff and volunteers focus on four major responsibilities: advocacy, public education, community-based research, and consumer empowerment programs.

**[www.cmha-bc.org](http://www.cmha-bc.org)**

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## How to Use this Guide

The following document has been created as a tool to assist people in understanding the Mental Health Act of British Columbia and the law governing the care and treatment of people with mental illness in BC. This document contains each section of the Mental Health Act, and a version of what the section really says in language we all can understand. The Consumer Development Project has consulted a lawyer, Mental Health Division staff, consumers and family members in the development of this document.

In this column, we provide a plain language description of the actual wording of the Act which is located in the larger column next to it. Please note that the language written in the larger column is what is legally applicable and this is just an interpretation.

This column contains the actual wording from BC's Mental Health Act.

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## Part 1 - Definitions

In this Act

“APPROVED HOME” means a home selected and approved under the regulations made under this Act

“COURT” means the Supreme Court of British Columbia

“DESIGNATED FACILITY” means a Provincial mental health facility 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*,

“FATHER” includes the husband of the mother of a person with a mental disorder

“MOTHER” includes the wife of the father of a person with a mental disorder

“NEAR RELATIVE” means a grandfather, grandmother, father, mother, son, daughter, husband, wife, brother, sister, half brother or half sister, friend, caregiver or companion designated by the patient and includes the legal guardian of a minor 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

This section outlines the various words used and their definitions under the Act.

(There are no approved homes currently in BC. This part of the legislation has never been used.)

(Riverview Hospital, Forensic Psychiatric Institute, Juvenile Services to the Court, Seven Oaks Provincial Mental Health Facility, Jack Ledger House, Burnaby Psychiatric Services, Regional Psychiatric Centre, The Maples Adolescent Treatment Centre, and Willow Clinic). Psychiatric units (Penticton Regional Hospital, Kelowna General Hospital, Vernon Jubilee Hospital, etc.)

e.g. Chief of Psychiatry; may also be a nurse or administrator.

The Patients Property Act is about guardianship and is available at [www.qp.gov.bc.ca/statreg/stat/P/96349\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/P/96349_01.htm)

(may mean a step-father)

(may include a step-mother)

This is any member of your immediate family or a legal guardian of someone under the age of 16, and a “committee”: A “committee” is the Public Trustee or person appointed by the court as having custody of a person. This person has the right to make decisions for you regarding health care, your property, and where you will live. (The power of the committee is set out in the Patient’s Property Act).

The following “observation units” have been designated since 1999:

- Kootenay Lake Hospital (Nelson)
- Lady Minto Gulf Islands Hospital (Ganges, Saltspring Island)
- Port McNeill and District Hospital
- Wrinch Memorial Hospital (Hazelton)
- Fort Nelson General Hospital
- St. Mary’s Hospital (Sechelt)

A “person with a mental disorder” may include a person with a brain injury, Parkinson’s disease, Alzheimer’s or dementia. The person would still need to meet the requirements for committal. The 1996 Mental Health Act referred to both mentally retarded and mentally ill people. This Act no longer makes reference to “mentally retarded persons.”

Licensing of Private Mental Health Facilities - currently there are none in BC.

for example – Riverview Hospital, Seven Oaks, South Hills

Vancouver General Hospital, Kelowna General Hospital, Vernon Jubilee, etc.

The Lieutenant Governor in Council refers to the Cabinet - the elected Ministers of Government.

for example the British Columbia Mental Health Society was responsible for the operation of Riverview Hospital prior to the spring 1998

Treatment will follow the current standards of psychiatric care in British Columbia. Treatment under the Mental Health Act relates only to a person’s psychiatric condition, not other physical health related conditions

“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 a person apparently 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 B.C. for a period determined (3 months) by the Lieutenant Governor in Council

“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 BC

“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 (Cabinet) 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 (*Cabinet*);
  - (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 (*Cabinet*) 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 Facility 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).

This is another way of saying the Cabinet. The Cabinet is made up of elected officials (MLAs) from communities throughout BC.

The government of BC can order a part or all, of a facility to be transferred to the management of a society. The government also sets rules about the running of the facility and its staff. So far, this transfer has only occurred with Riverview Psychiatric Hospital, which was put under the management of the British Columbia Mental Health Society. This was done as a way to maintain an arms length from the government and create a Board of Directors who has the expertise to manage the operation of Riverview Hospital much the same way as other hospital Boards of Directors. In 2001 however, with the change in government, overall authority and management of Riverview has been maintained by the government through Health Authorities.

A place that is not licensed as a private mental health facility by the government cannot be paid to provide care for a person with a mental disorder.

Any resident of BC with a mental disorder has the right to receive care in the facilities covered under the Act. Refer to section [18] (When Persons are not to be Admitted) on page 11 for further discussion on this point.

A director of a mental health facility must make sure all patients receive suitable care and treatment for their mental disorder. The director may sign treatment orders for a patient held under sections [22] (Involuntary Admissions), [28] (Emergency Procedures), [29] (Prisoners and Youth Custody Centre Inmates), [30] (Detention under Criminal Code), or [42] (Transfer from other Province) of this Act. The director must make sure standards of care and the rules of the Minister are followed.

A person who is a voluntary patient may have to pay service charges (a daily fee for services set out in the Regulations under the Act). Cabinet may set rates, and may not charge a particular category of people. The payment required may be based upon an individual's income. This is specific to a provincial mental health facility.

Cabinet may appoint an unpaid 3-member assessment committee to reduce or remove the costs set in section [9](1).

Any person (such as a guardian, trustee or committee) financially responsible for a patient in a provincial mental health facility must, if asked, pay the costs set out in section [9](1).

## Persons entitled to service

- 6 Subject to sections [12] (Admissions from Penitentiaries) and [18] (When Persons are not to be Admitted), 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.
- 7 {repealed, S.B.C. 1997 c. 23, effective August 25, 1997, B.C. Reg. 294/97}

## Powers and duties of directors

- 8 A director must ensure
- 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] (Involuntary Admissions), [28] (Emergency Procedures), [29] (Prisons and Youth Containment Centre Inmates), [30] (Detention under *Criminal Code*), or [42] (Transfer from another Province),
  - that standards appropriate to the function of the designated facility are established and maintained, and
  - 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 (*Cabinet*) may prescribe daily charges for care, treatment and maintenance provided in a Provincial mental health facility.
  - 2) The Lieutenant Governor in Council (*Cabinet*) may by regulation exempt a class of patient from the prescribed daily charges.

## Assessment committee

- 10
- 1) The Lieutenant Governor in Council (*Cabinet*) may appoint an assessment committee, consisting of 3 members, who hold office during pleasure (*this means they may be fired at any time by Cabinet*) 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 (Cabinet), 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 (Federal Government)

- 14 The Lieutenant Governor in Council (*Cabinet*) 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] (Prisoners and Youth Containment Centre Inmates) 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;

The person responsible for payment of the patient's bills may be sued for payment of the costs set out in section [9](1). The daily charge is set out in a formula in the regulations.

If someone is being transferred from a federal institution, prison, jail, etc., the Canadian government must agree to pay for all the costs of their care and treatment or the person cannot be admitted to the provincial mental health facility.

There may be an agreement made between provinces to pay for the care and treatment of patients from out of province in a BC facility, or for the payment for care of a BC resident in a facility in another province. The Cabinet of BC must approve the arrangement.

Patients who are being held as criminals must be transported separately from other persons with a mental disorder.

A person providing information, or asking to have another person admitted involuntarily, is not liable for damages if they are sued if it is believed that they are acting in good faith and with reasonable care. Legal Definitions: "Liable for damages" - legally responsible to pay for harm done to someone. "Good faith" - honestly and without deception. "Reasonable care" - is the level of care an average person would use if faced with the same situation. "Laying an information" is the act of giving information about a person that results in them either being picked up by the police for examination, or certified and admitted to hospital.

If a parent or legal guardian of a person under 16 asks to have the person admitted, the director is not liable for damages if s/he is acting in good faith and with reasonable care and follows the rules set out in section [20] (Voluntary Admissions) (4) (written reports) for the admission and continuing treatment of that person.

The director of a facility is not liable for damages if s/he admits and keeps a patient based on a medical certificate, warrant (an official order authorizing someone to be picked up by the police) see section [28], report or decision made by a court, or based on the decision of a review panel.

A director who gives permission for treatment or signs the form to allow treatment, a doctor who signs a medical certificate or makes a report, a justice of the court who makes a decision, or a judge, justice or director who issues a warrant is not liable for damages if s/he acted honestly and fairly.

A police officer is not liable for damages if s/he followed the rules when picking up a person for a psychiatric examination and if s/he acted honestly and fairly.

A member of a review panel is not liable for damages if s/he followed the rules and acted honestly and fairly.

A director is not liable for damages regarding transfers, leaves, and recall, if s/he acts in good faith and with reasonable care, and follows the rules set out in the regulations.

If a person is on extended leave or transferred to an approved home (currently none in BC), the individual(s) providing treatment and care is not liable for damages as long as s/he is following the rules and acting honestly and fairly.

- (b.1) if the person is the director, admitting a patient to the designated facility under section [20](1) (a) (ii) (Voluntary Admissions) on the basis of a physician's opinion or continuing the admission and treatment of the patient on the basis of a report 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] (Review and Renewal of Detention), or [25] (Hearing by Review Panel);
- (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) (Emergency Procedures)
- (g) making a determination under section [25] (1) (Hearing by Review Panel) as a member of a review panel;
- (h) if a director, releasing a patient under section [37] (Leave), transferring or accepting the transfer of a patient under section [35] (Transfers) or [38] (Approved Homes) or recalling a patient under section [39] (Authority to Detain Continues Despite a Leave or Transfer) 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] (Leave) or [38] (Approved Homes).

## Offence

- 17 1) A person commits an offence punishable under the *Offence Act* who:
- (a) assists a patient to leave or 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 willfully neglects a patient commits an offence punishable under the *Offence Act*.

It is a crime to help a patient leave a designated facility without proper permission; or do something to help a person leave; or not do something (i.e. not lock a door) that will help a person to leave. It is also a crime to advise someone to leave a designated facility without permission.

It is a crime for an employee of a designated facility, or anyone responsible for a patient, to abuse a patient in any way; this includes deliberate neglect.

## 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.

If appropriate space is not available in a provincial mental health facility to care for, maintain and treat a person, they must not be admitted. For example, if the only space available for an adult is in a children's hospital, the person is not to be admitted. This applies only to provincial mental health facilities, not local hospitals. There is no law that says a director must find a person a bed if no beds are available.

If the director believes a person does not have a mental disorder, the person must not be admitted to a provincial mental health facility. If a person's mental disorder cannot be cared for suitably, they must not be admitted to a provincial mental health facility. For example, a child would not be admitted to a psychiatric facility for elderly people.

### Admission of a female person

- 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.

When a female patient is being admitted directly from the community to a provincial mental health facility, they must be accompanied by either a near relative or another woman. It is the responsibility of the mental health professional who asks, or applies to the court, to make the necessary arrangements to have the woman admitted. However, this does not apply when a female involuntary patient is being transferred from a local hospital to a provincial mental health facility.

A doctor may admit a person under 16 years of age with a mental disorder to the hospital if the individual or their parent/guardian asks them. Proper process must be followed as outlined above.

If a person under 16 years old is admitted, a doctor must examine them and review the situation once a month for the first 2 months, then within 3 months after the second exam, then within 6 months of the third exam. The doctor's examinations must occur at least every 6 months after that.

A person must be discharged if a doctor has examined them and believes the person does not have a mental disorder.

The doctor must make a written report for each patient, for each exam that states the person has a mental disorder and why the doctor believes the person has a mental disorder.

The director must be told immediately of any patient who is voluntarily admitted who wants to be discharged.

Any patient over 16 years admitted voluntarily must be discharged if s/he wants to leave.

If a patient is under 16 and the parent or guardian tells the director s/he want the patient discharged, the patient must be discharged.

If the patient is under 16 and a doctor, authorized by the director examines the patient and feels s/he does not have a mental disorder, s/he must be discharged.

## 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 request 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 the patient.
  - 4) If the physician who examines the 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) (Involuntary Admissions) 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 age 16

- 21 1) If a patient admitted to a designated facility under section [20] (1) (a) (ii) (Voluntary Admission) desires to leave the facility and is under 16 years of age, section [25] (Hearing by a Review Panel) applies as though the patient had been admitted under section [22] (Involuntary Admissions) 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). (Voluntary Admissions - Patient under 16)
- 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 subsection (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).

If a person has been involuntarily admitted (committed) the above items do not apply.

A person over 16 voluntarily admitted to a designated facility is considered to be able to make decisions about payment for the treatment for their mental disorder.

When a person under 16 asks to be discharged, and no parent or guardian asks for the discharge, the person must have a hearing by a review panel in order to be discharged.

If the review panel finds that the person under 16 does not have a mental disorder they must be discharged.

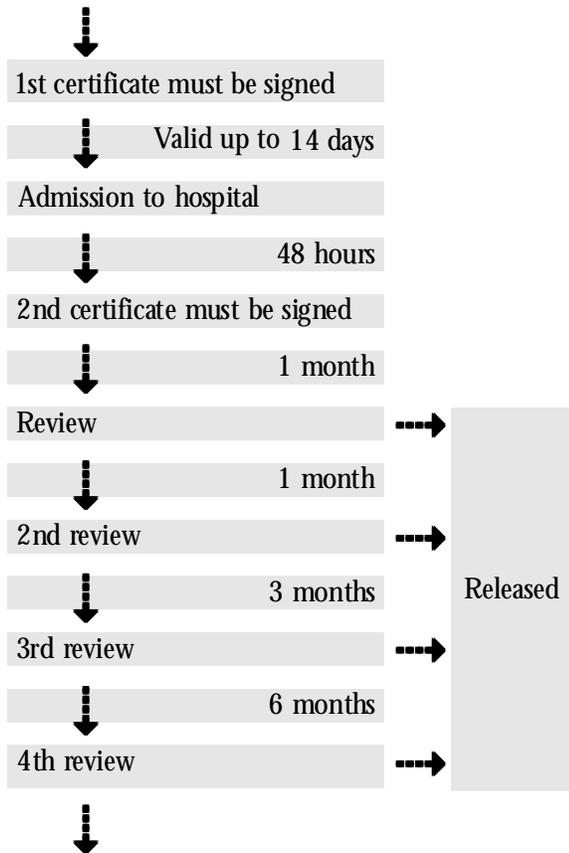
The director may admit a person for up to 48 hours with one medical certificate that explains:

- 1 when the patient was examined, and
- 2 that the person has a mental disorder, and
- 3 the need for care/treatment in a designated facility, and
- 4 that care is needed to keep the person from becoming more ill.

See committal criteria (subsections (3) and (4) on page 14. A person may see their doctor and get the first certificate signed up to 14 days before they are actually admitted to the hospital or psychiatric facility. Once they are admitted to the hospital, a second doctor's examination and certificate must be completed within 48 hours. Those certificates last for up to one month at which point another doctor's examination must occur to determine if the individual's condition continues to meet the criteria for committal. If the person does not meet the criteria, s/he must be discharged.

A second doctor, who examines the patient during the 48-hour period, must complete a second certificate in order to keep and treat the patient longer.

## Progression of Committal



The term “protection” covers more than just physical harm. It also relates to the social, family, work or financial life of the patient as well as physical condition. (This is paraphrased from the BC Supreme Court case of McCorkell v. Riverview Hospital [1993])

- 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] (Leave) (Approved Homes).

Both doctors, who have completed the examination of the person to be involuntarily admitted/committed, must write a separate report that gives his/her opinion that the person:

- has a mental disorder and,
- needs care, management and control in a designated facility to keep them from putting at risk their well being or the well being of someone else or to keep their mental or physical condition from getting worse and,
- could not rightfully be admitted as a voluntary patient.

A person must meet all three of these conditions in order to be involuntarily admitted.

If a doctor has filled out a certificate, and then the patient cannot be found, the certificate is valid for 14 days from the time it was filled out. For example, a person is seen by the doctor in his office, the doctor fills out a certificate, but in the meantime the person leaves and hides.

Both the second certificate by a doctor and the examination of the person to be admitted involuntarily must be done within 48 hours after admission.

A person may be picked up, taken to the hospital and admitted and treated when ONE medical certificate has been filled out.

Unless s/he has already been discharged or granted Leave [37], anyone admitted to an observation unit and who has received their second certificate, must be transferred to a provincial mental health facility or psychiatric unit within 5 days according to the Mental Health Regulations Section 2 [2].

A person involuntarily admitted may be kept for up to one month. A renewal of detention must be issued after a doctor examines the patient, otherwise the patient must be discharged.

At the end of the second one-month period, a doctor must see the patient again before a renewal certificate can be completed. The new certificate takes effect as soon as the old one expires.

At the end of another three months of involuntary admission, the patient must again be examined and a renewal certificate issued. (This is 5 months after their second certificate)

The same process must be repeated at the end of six months, (this is 11 months after their second certificate) and every six months after that.

The director, or a doctor approved by the director, must complete a written report after examining the patient during each of the periods described in this section of the Act. The report must state why the person still meets the criteria for being committed.

## Duration of detention

23 A patient admitted under section [22] (Involuntary Admissions) 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 and Renewal of Detention).

## Review and renewal 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] (Duration of Detention) for a further period of one month;

b) from the end of any period of renewal under paragraph (a) for a further period of three 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] (Duration of Detention),

b) every further one month period referred to in subsection (1)(a), and

c) the last 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) (Involuntary Admissions) 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]. (Involuntary Admissions).

2.2) If an examination under subsection (2) concludes that section [22](3)(a)(ii) and (c) (Involuntary Admissions) 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.

#### Hearing by review panel

- 25 1) A patient detained under section [22] (Involuntary Admissions) is entitled, at the request of the patient or a person on the patient's behalf, to a hearing by a review panel (for information about who is on a review panel see section [25] (5) (a), (b) and (c))
- a) within a prescribed time after the commencement of a one month period, or further one month period, referred to in section [23] (Duration of Detention) or in section [24](1)(a) (Review and Renewal of Detention),
  - b) within a prescribed time after the commencement of a 3 month period referred to in section [24](1)(b) (Review and Renewal of Detention), or
  - c) during any 6-month period referred to in section [24](1)(c) (Review and Renewal of Detention), within a prescribed time after 90 days after the conclusion of any previous hearing.

The information reviewed by the doctor must include all realistically available information regarding:

- the patient's most recent hospitalizations for treatment
- whether they have followed treatment plans after leaving hospital, and
- an opinion on the chances that, because the patient has a mental disorder, s/he will not follow treatment plans and be involuntarily admitted again.

(Information from 10 years ago is not likely to be used in this situation. It really pertains to an individual's recent past.)

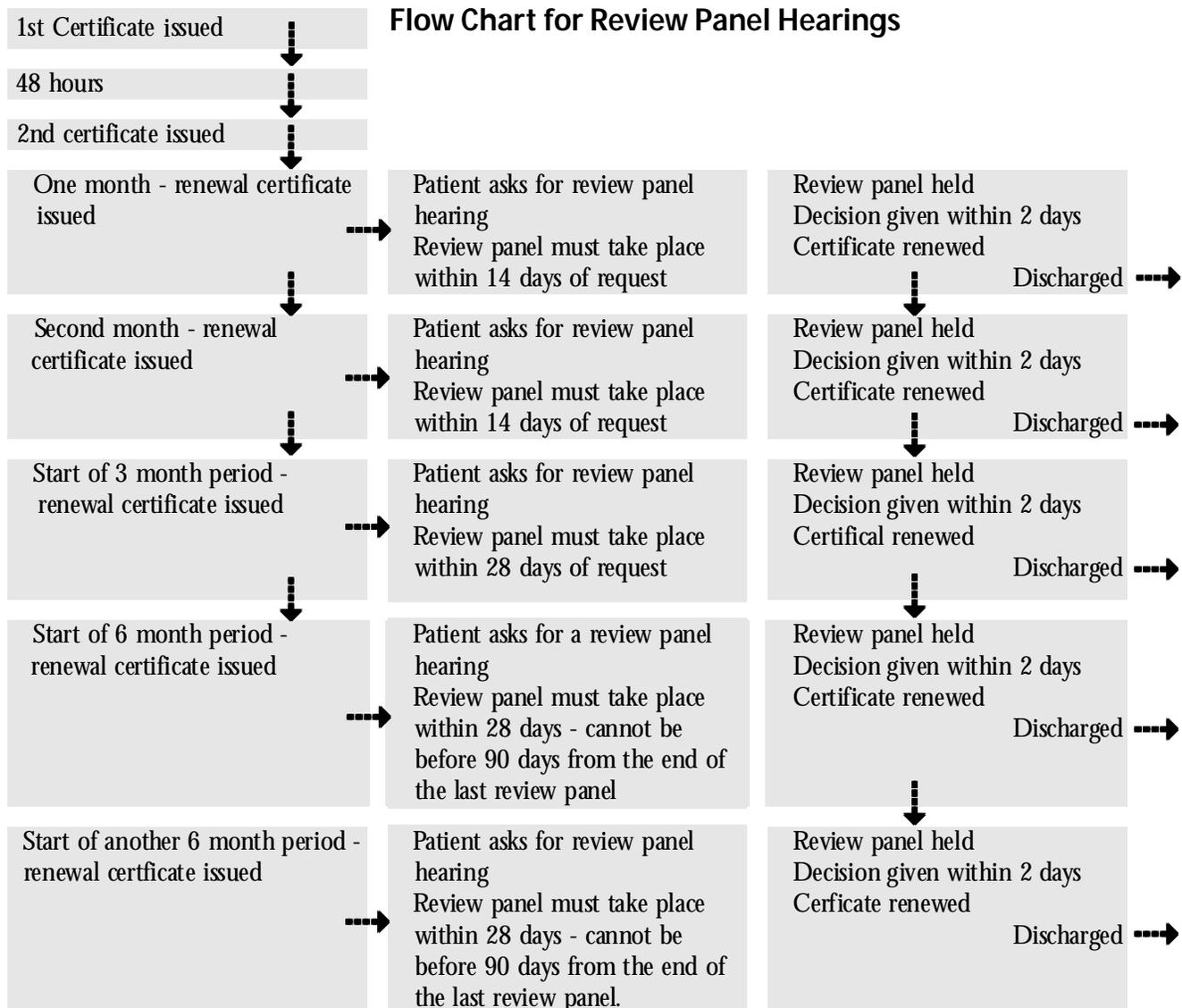
After the doctor has examined the patient and feels s/he still meets the criteria for being committed, the doctor must write a report and the patient will continue to be involuntarily admitted/committed. These examinations and reports are done during each time period described in section [2].

The doctor's written report stating that the patient still meets the requirements is considered the renewal certificate. The renewal takes effect on the date the old certificate would have expired.

The prescribed period during the first 2 one-month periods is 14 days according to Section 6 [5] of the Mental Health Act. So, the review panel hearing must be held before the end of 14 days from when the patient asks for it in their first two months of involuntary admission.

After the first two one-month periods, according to Section 6 (6) of the Mental Health Regulations, the prescribed period is 28 days. Therefore, once a hearing is asked for after the third month someone is involuntarily admitted, a review panel hearing must be held within 28 days of the request. A hearing cannot be asked for until at least 90 days have passed since the results of the last hearing. (See flow chart on the next page). Any patient, or person acting on behalf of the patient, has the right to ask for and receive a hearing by a review panel. A review may be asked for during any of the periods described in section [25](a), (b), or (c).

## Flow Chart for Review Panel Hearings



There must be an automatic review of the treatment record of any person on leave more than 12 months who has not requested or had a review panel hearing. If it is felt that the person would likely be discharged if there were a review panel, a hearing must be held to review whether to keep the person on leave or in the approved home (currently no approved homes in BC). This provides a guarantee that each person's file will be reviewed after 12 months.

If a patient has been on leave or transferred to an approved home under section [37] (Leave) or [38] (Approved Homes) for 12 or more consecutive months and a hearing under this section has not been requested or held within that period, a chair appointed under subsection (7) 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) (Involuntary Admissions - criteria) continue 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 physician authorized by the director considers necessary to minimize the possibility that the patient will again be detained under section [22] (Involuntary Admissions).
- 3) A chair appointed under subsection (7) 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) A patient must not be discharged until the results of the hearing are made known to the patient and then only if the results of the hearing indicate that the patient should be discharged.
- 4.1) If the hearing under subsection (2) concludes that section [22](3)(a)(ii) and (c) (Involuntary Admissions - criteria) continue to describe the condition of the patient, the review panel must determine under subsection (2) that the detention of the patient be continued.

The evidence reviewed by the panel must include all reasonably available information regarding:

- the patient's hospitalizations for treatment
- whether they have followed treatment plans after leaving hospital, and
- an opinion on the likelihood that, because the patient has a mental disorder, s/he will not follow treatment plans and be involuntarily admitted again.

Information from 10 years ago is not likely to be used in this situation. It really pertains to an individual's recent past. This is exactly the same information reviewed by the doctor. The only difference is that there are other people present at a review panel as described in Section [25](3). The patient may also appoint an advocate to assist them in building their case.

If the hearing shows that the patient should be kept on an involuntary basis, the review panel must renew his/her committal certificate. According to the Mental Health Act Regulations 6 (20) the review panel must make their decision within 48 hours of the hearing.

The review panel is comprised of 3 people. The first is a chair, usually appointed by the Minister. There is an office located at Riverview Hospital, which organizes all review panel hearings. 604-524-7219/7220. The second is a doctor who is appointed by the hospital or facility where the patient is receiving treatment. The third person (cannot be the patient or a family member) is appointed by the patient (the director will appoint someone for the patient, if the patient does not). This person is NOT the patient's advocate but will likely have a good understanding of the issues and the community's mental health system. The individuals on the review panel must not have any contact with the patient prior to the review panel hearing in order to avoid any biased information. In addition, a patient may appoint anyone they wish (friend, paid/volunteer advocate or family member) to act on their behalf at a review panel hearing. It is the best interests of the individual to find someone who can present their case and situation honestly and fairly. There are mental health advocates available in some communities throughout BC who may represent the patient.

The Minister is free to decide if there will be a reimbursement fee paid to cover travel and out-of-pocket expenses for those people part of a review panel hearing.

A member of the police may pick up a person they believe has a mental disorder and take them to a doctor or hospital Emergency ward for an examination.

The person must be let go if a doctor does not complete the necessary medical certificate.

- 5) For the purposes of a hearing under subsection (1), a review panel consists of the following persons:
  - a) a chair,
  - b) a physician appointed by the designated facility in or through which the patient is receiving treatment, and
  - c) a person, other than the patient or a member of the patient's family, who is appointed by the patient
- 6) If the patient does not appoint a person under subsection (5)(c), the director may appoint a person who, in the director's opinion, has knowledge of the circumstances of the patient.

- 7) The Minister must appoint one or more persons as chair under subsection (5)(a) for the purpose of
  - a) conducting hearings as and when they may be required under subsection (1), and
  - b) making decisions as and when they may be required under subsection (3).
- 8) The Minister may reimburse a person appointed under subsection (5), (6) or (7) for reasonable traveling or out of pocket expenses necessarily incurred by the person in discharging duties under this section, and, in addition, may pay the person the remuneration for the person's services the Minister may determine.

26 Repealed  
27 Repealed

### 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). (Involuntary Admissions - criteria and 14 day time period).

- 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)(iii) and (c) (Involuntary Admission Criteria) 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] (Involuntary Admissions) 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 completed as described in section [22] (3), (Involuntary Admissions - criteria)
- 7) On the director receiving 2 medical certificates as described in subsection (6), section [22](6) and (7) (Involuntary Admissions - medical certificate; transfer from an observation unit) applies to the patient.

Anyone may ask a judge to issue a warrant if they feel a person meets the committal criteria.

A judge or justice may issue a warrant to have a person picked up for examination if they believe there are sufficient reasons to believe that the individual meets the requirements, and the usual methods of involuntary committal would take too long.

The written authorization of a warrant is enough to pick up a person, take them to a designated facility, and admit them for treatment for a period of up to 48 hours.

After 48 hours, if the director has not received 2 completed medical certificates stating how the person meets the criteria for involuntary admission, the patient must be discharged.

If the director has received the necessary medical certificates, the Involuntary Admissions section [22] of the Act applies to the patient.

#### Prisoners and youth custody centre inmates

- 29
- 1) The Lieutenant Governor in Council (Cabinet), on receiving 2 medical certificates completed in accordance with section [22] (Involuntary Admissions) concerning the mental condition of a person imprisoned or detained in a correctional centre or youth custody centre under the *Correction Act* or 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*, 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.

If a person is in prison, being held by police, or in a youth custody centre, and Cabinet receives 2 medical certificates that state the person meets the criteria for involuntary admission, Cabinet may order the person to be taken to a provincial mental health facility. (This has not happened since 1981 when sections 4 and 5 below were added.)

Once the person in charge of the prison, jail or youth custody centre receives the order, the person with the mental disorder must be taken to the provincial mental health facility and copies of both medical certificates must be sent to the director.

The person with a mental disorder who was in prison/detention will be kept in the designated facility until they have partly or completely recovered or something happens that gives good reason for their discharge. At the time of discharge, the person will either be returned to prison or completely discharged.

When 2 medical certificates about a person are received directly by a prison, lock-up, etc. according to section [22] (Involuntary Admissions) the person in charge of the prison may approve the transfer of the prisoner to a provincial mental health facility.

Once the director of a provincial mental health facility receives the 2 medical certificates, s/he may admit the person with a mental disorder from the prison, jail or youth custody centre.

Once the director of the designated facility is convinced of the person's partial or full recovery, s/he must either return the person to prison or discharge them.

Essentially there has to be full agreement by both the prison/detention centre authorities and the provincial mental health facility authorities to transfer people who have a mental disorder.

The sections of the Act regarding duration of detention [23], review and renewal of detention [24] and hearing by a review panel [25] apply to the person who has been admitted from a prison, etc.

- 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 (*Cabinet*) 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 (*Cabinet*), 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 in accordance with section [22] (Involuntary Admissions) concerning the mental condition of a person imprisoned or detained in a correctional centre, a youth custody centre under the *Correction Act* or 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) Section [23] to [25] (Duration of Detention, Review and Renewal of Detention, Hearing by Review Panel) 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].(Duration of Detention, Review and Renewal of Detention, Hearing by Review Panel)

- 9) Section [33] (Application to Court for Discharge) 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.

A person who is found under the Criminal Code of Canada to be:

1. unfit to stand trial before the trial takes place,
2. or is found not criminally responsible at the trial because of his/her mental disorder, and,
3. who is ordered by the court to be held in a provincial mental health facility, must be given proper care for their mental disorder.

Being “unfit to stand trial” means that the accused person does not understand the court procedure and is unable to properly advise his/her lawyer. Under the Criminal Code, a person may be treated until they are “fit” to stand trial. Sometimes, this can be a long process.

A finding of “not criminally responsible by reason of mental disorder” at the trial, formerly called “not guilty by reason of insanity”, means that the accused person was found to have committed the crime but did not know the difference between right and wrong at the time because of his/her mental disorder and is excused from the usual punishment. However, s/he is/will be held in a forensic psychiatric facility for treatment.

The term “Forensic” according to the Oxford dictionary refers to the application of medical knowledge to legal problems.

#### Deemed consent to treatment and request for a second opinion

31 1) If a patient is detained in a designated facility under section [22] (Involuntary Admissions), [28] (Emergency Procedures), [29] (Prisoners and Youth Custody Centre Inmates), [30] (Detention under *Criminal Code*) or [42] (Transfer from other Province), or is released on leave or is transferred to an approved home under section [37] (Leave) or [38] (Approved Homes), treatment authorized by the director is deemed to be given with the consent of the patient.

According to the law, any person that has been admitted involuntarily is considered to be in agreement with the treatment.

A patient admitted involuntarily, or someone on their behalf, may ask for a second opinion on whether or not the treatment they are being given is suitable. See section [23] and [24] for a timetable.

When a second medical opinion is given, the director makes the decision about whether or not to change the treatment.

Patients are required to follow rules of conduct enforced by staff of the facility.

- 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 sections [23] (Duration of Detention) or [24] (1)(a) (Review and Renewal of Detention);
  - 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) (Voluntary Admissions) (example Form 1), 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) (Involuntary Admissions) (example Form 4), or a report or determination made under section [24] (Review and Renewal of Detention) (example Form 8) or [25] (Hearing by a Review Panel), or
- c) a warrant under section [28] (Emergency Procedures) (example Form 10), [39] (Authority to Detain Despite Leave or Transfer), or [41] (Unauthorized Absences);

“PATIENT” means

- a) a person whose admission is requested, or a patient who is admitted, under section [20] (1)(a)(ii) (Voluntary Admissions),
- b) a patient who is detained under section [22] (Involuntary Admissions), [28] (Emergency Procedures), or [42] (Transfer from other Province), or whose detention is renewed or continued under section [24] (Review and Renewal) or [25] (Hearing by a Review Panel) or
- c) a person or patient for whom a medical certificate has been completed as required under section [22] (1) (Involuntary Admissions), or a warrant has been

issued under section [28] (Emergency Procedures), [39] (Authority to Detain Despite Leave or Transfer), or [41] (Unauthorized Absences), 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] (Involuntary Admissions).

If a person has been ordered by the court to be involuntarily admitted, and the person or their representative do not agree with the order, then a request may be made to the court to reverse the involuntary committal certificate.

Definitions:

- A “writ” is a legal document issued by a court ordering something to be done.
- A “writ of Habeas Corpus” - is a writ requiring a person to be brought before a court so that the court can investigate and determine the lawfulness of his/her restraint. This whole process is expensive. Legal Aid only provides service for criminal charges and because involuntary admission is not a criminal charge, legal aid will not help.
- “Prerogative writs” are writs used in administrative law (an area that deals with government bureaucracy and its decisions). In BC, relief, formerly provided by prerogative writs, is now done by statute under the Judicial Review Procedure Act.

When a hearing is requested, under subsection [2] above, the court may look at any records or other evidence it thinks is important to make its decision.

The information reviewed by the court must include all available information regarding:

- the patient’s past hospitalizations for treatment
- whether they have followed treatment plans after leaving hospital, and
- an opinion on the chances that, because the patient has a mental disorder, s/he will not follow treatment plans and be involuntarily admitted again.

The certificate stands if the court determines that the patient still meets the criteria for involuntary admission.

The court may decide on any of the following options if there is not proper reason to issue a certificate.

- 6) If the review under subsection (4) concludes that section [22](3)(a)(ii) and (c) (Involuntary Admissions) 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 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) (Involuntary Admissions), [28](5) (Emergency Procedures), [29] (Prisoners and Youth Containment Centre Inmates) or [42](1) (Transfer from another Province)
  - b) the patient's transfer to a designated facility under section [35] (Transfers);
  - c) a renewal of the patient's detention under section [24] (Review and Renewal of Detention).
- 2) A notice under this section must be given in writing in the prescribed form (Form 13) 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] (Duration of Detention), [24] (Review and Renewal of Detention, [25] Hearing by a Review Panel), [31] (Deemed Consent to Treatment and Request for a Second Opinion) and [33] (Application to Court for Discharge). These sections outline timelines.
  - 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) (Voluntary Admissions), or
  - b) the making of a report under section [20] (4) in respect of the patient's admission under section [20] (1) (a) (ii). (Voluntary Admissions)
- 2) A notice under this section must be given in writing in the prescribed form (Form 14) 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*,

Section 10 of the Canadian Charter of Rights and Freedoms states:

everyone has the right on arrest or detention

- a) to be informed promptly of the reasons therefore;

- b) to retain and instruct counsel without delay and to be informed of that right; and

- c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful

This section of the Canadian Charter of Rights and Freedoms makes sure that if a person is arrested or held involuntarily, they must be given the following information as soon as possible:

- why they are being held
- that they have the right to hire and talk with a lawyer
- to ask for a writ of "habeas corpus" to see if their being arrested and held was done according to the laws

(The Charter may be viewed on the web at: <http://laws.justice.gc.ca/en/charter>)

The director must be sure a patient is able to understand these rights. If the director believes the patient was not able to understand, the information must be given again to the patient as soon as the director believes the patient is able to understand and as often as needed until the patient does understand these rights.

This section is exactly the same as section [34] except that it applies specifically to people under 16 years of age.

Information regarding a patient's rights must be given in writing to a near relative of the patient, immediately after the patient is voluntarily (if the person is under 16) or involuntarily admitted to a designated facility.

A near relative of a patient must be notified when a patient is discharged or is going to be seen by a hearing review panel.

When there is no information regarding the near relatives, written notice must be sent to the Public Guardian and Trustee to meet the terms of the law.

If a person to be transferred came from a correctional centre, youth custody centre, prison or lock-up, the Cabinet must approve the transfer to another provincial mental health facility. Or, the person in charge of the original facility must authorize the transfer.

- c) the provisions of sections [21], (Review Panel for Person under age 16) [25] (Hearing by Review Panel), [31] (Deemed Consent to Treatment and Request for a Second Opinion) and [33] (Application to Court for Discharge);
  - 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 a near relative

- 34.2
- 1) The director must send to a near relative of the patient a written notice (Form 16) setting out the patient's rights under sections [21] (Review Panel for Person under age 16), [23] (Duration of Detention), [24] (Review and Renewal of Detention), [25] (Hearing by Review Panel), and [33] (Application to Court for Discharge) immediately after
    - a) the admission of the patient to the designated facility under section [20](1)(a)(ii) (Voluntary Admissions), or
    - b) the admission and detention of the patient in the designated facility under section [22](1) (Involuntary Admissions) or [28](5) (Emergency Procedures).
  - 2) The director must give notice in the prescribed manner (Form 17) 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) (Hearing by Review Panel) from someone who is not a near relative of the patient.
  - 3) On making an order under section [25](1.1) (Hearing by Review Panel), the chair must give a notice of the order in the prescribed manner (Form 18) 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] (Prisoners and Youth Containment Centres) 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 (*Cabinet*) or
    - b) if the person is detained under section [29](4) (Prisoners and Youth Containment Centre Inmates) 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 (i.e. filling out medical certificates) 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) (Unauthorized Absences), 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] (Exception to Rules about Leave and Approved Homes) 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] (Exception to Rules about Leave and Approved Homes) 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] (Leave) or [38] (Approved Homes) 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.

If a patient has been transferred to another facility, there is no change to the time periods for reviews, panels and appeals. These time frames are still in effect as though the person were never transferred.

An application, request, medical certificate, or warrant made or issued before a patient was discharged is not in force after the discharge. Once a patient is discharged, then all certificates become null and void.

When a patient is discharged, the director, if asked by the patient or someone acting on their behalf, must complete a certificate stating that the patient is released.

A "leave" (may also be called an "extended leave" or "community committal") means that the patient is still involuntarily admitted but they are no longer staying in hospital but at another mental health facility in the community. When a person is on a "leave" there are specific reasons for their absence from a facility. This may be "a pass" to spend a weekend with family or it may mean that the person will be living in the community with specific supports. The director may spell out conditions for the care of the patient while away. An extended leave needs to have the purpose, length, and conditions of the leave recorded in the chart, or on a specific form (form 20) as specified in the regulations

Currently there are no approved homes in BC so this section of the Act has never been used.

Even though a patient has been granted leave, or transferred to an approved home, s/he is still bound by the Act, and all rules still apply.

Certain conditions may be placed on patients given leave or transfer, such as continuing to take medications or seeing a doctor or mental health workers at regular intervals. If the patient fails to meet these conditions, s/he may be picked up and returned to the facility.

If a patient is recalled from leave before 6 months, meaning that they have not met the conditions of the leave, the dates for reviews and appeals remain the same. However, if a patient has been on leave for 6 or more continuous months, and is recalled to a designated facility, they are considered to be admitted from the date they return to the facility, and all times for review and appeals start from that date.

If a patient leaves the facility without being on leave, transferred to an approved home, or discharged, the director may issue a warrant for the person to be picked up and transported to a designated facility. This must be done within 60 days after the patient is known to have left the facility.

When a warrant is issued, the police must help in any way to pick up and transport the patient back to the hospital.

- 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 is authorized and agreed to under section [35] (Transfers).
- 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] (Transfers), 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 section [23] (Duration of Detention), [24] (Review and Renewal of Detention) and [25] (Hearing by Review Panel), to have been admitted under section [22] (1) (Involuntary Admissions) 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 (*Cabinet*), sections [37] (Leave) and [38] (Approved Homes) do not apply to a patient
- a) who was admitted to a Provincial mental health facility under section [29] (Prisoners and Youth Custody Centre Inmates) 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], (Leave) or [38] (Approved Homes), 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 other 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) (Involuntary Admissions).
  - 3) On the director receiving 2 medical certificates as described in subsection (2), section [22](6) and (7) (Involuntary Admissions) applies to the patient.

If after 60 days from the time they left the hospital the patient has not been found, the patient is considered to be discharged (except for under the conditions set out below).

If a patient who has been kept in the hospital, was charged with an offence or likely to go to jail, or is thought apt to endanger their safety or someone else's, the director may issue a warrant for the person to be picked up and returned to the hospital even though 60 days have passed.

If a person is in a hospital in another province because of a mental disorder, and a director in BC gets a written request from that hospital or facility, it is at the director's discretion to have the person brought to a BC facility and admitted.

If a person has been transferred from another province to a provincial mental health facility in BC, two medical doctors must fill out a medical certificate each within 48 hours to be able to keep the person for treatment. Each doctor must write a separate report that gives his/her opinion that the person:

- Has a mental disorder and,
- Needs care, management and control in a designated facility to keep them from putting at risk their well being or the well being of someone else or to keep their mental or physical from getting worse and,
- Could not appropriately be admitted as a voluntary patient.

The person must meet all three of these conditions in order to be involuntarily committed. Once the director receives the 2 medical certificates, the patient may be kept for treatment according to section [22](6) and (7) of the Act.

## Part 4 - Regulations

### Power to make regulations

- 43 1) The Lieutenant Governor in Council (*Cabinet*) may make regulations referred to in section [41] of the *Interpretation Act*.
- 2) Without limiting subsection (1), the Lieutenant Governor in Council (*Cabinet*) may make regulations as follows:
- a) prescribing forms, including the form of the warrant under section [28] (Emergency Procedures), [39] (Authority to Detain Continues Despite Leave or Transfer), or [41] (Unauthorized Absences);
  - 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 a person 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 license 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]; (Duration of Detention, Review and Renewal of Detention, Hearing by Review Panel)
  - n) prescribing the period referred to in section [22](7) (Involuntary Admissions);
  - 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] (Deemed Consent to Treatment and Request for a Second Opinion)

# Yes!

## Sign me up as a member



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## Notes





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