

1975 Bill 64
(Second Session)

First Session, 18th Legislature, 24 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 64

THE MENTAL HEALTH AMENDMENT ACT, 1975

DR. BACKUS

First Reading

Second Reading

Third Reading

Bill 64
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(Second Session)

THE MENTAL HEALTH AMENDMENT ACT, 1975

(Assented to , 1975)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. The Mental Health Act, 1972 is hereby amended.

2. Section 28 is amended by striking out subsection (2) and substituting the following subsection:

(2) Where a person is detained under

(a) a conveyance and examination certificate, or

(b) one admission certificate,

that person shall be released upon the expiry of 24 hours from the time that the person arrived at the facility unless there are, within that time, two admission certificates in effect with respect to that person.

3. Section 30 is amended by striking out subsection (2) and substituting the following subsection:

(2) One admission certificate has the same effect and provides the same authority as a conveyance and examination certificate issued under section 26.

4. Section 35 is amended

(a) *as to subsection (1) by striking out the word "affairs" and substituting the word "estate",*

(b) *as to subsection (2), clause (c) by striking out the word "affairs" and substituting the word "estate".*

Explanatory Notes

1. This Bill will amend chapter 118 of the Statutes of Alberta, 1972.

2. Section 28 (2) presently reads:

(2) Unless two admission certificates are issued with respect to a person detained under a conveyance and examination certificate within 24 hours of the time he arrives at the facility, the person shall be released.

3. Sections 26 and 30 presently read:

26. (1) A conveyance and examination certificate is sufficient authority

(a) for any person to convey the person named therein to a facility within 72 hours of the time it is issued and to detain that person while he is being so conveyed until the time he arrives at the facility, and

(b) for any physician to prescribe treatment for or to treat the person named therein while he is being so conveyed and until the time he arrives at the facility.

(2) Where a person is conveyed to a facility pursuant to a conveyance and examination certificate, the conveyance and examination certificate is sufficient authority

(a) for one or more therapists or physicians who are members of the staff of the facility to observe and examine the person named therein,

(b) to provide such treatment as in the opinion of the physician or therapist may be essential for the well-being of the person named therein, and

(c) to care for, detain and control the person named therein,

for a period of 24 hours from the time that person arrives at the facility.

30. (1) Two admission certificates are sufficient authority to observe, examine, care for, treat, control and detain the person named therein, in a facility, for a period of one month from the date the second admission certificate is issued.

(2) Where the person named in two admission certificates is not in a facility, the certificates are sufficient authority

(a) for any person to convey the person named therein to a facility within 72 hours of the time the second admission certificate was issued and to detain that person while he is being so conveyed until he arrives at the facility, and

(b) for any physician to prescribe treatment for or to treat the person named therein while he is being so conveyed and for a period of 24 hours from the time he arrives at the facility.

4. Section 35 (1) and (2) presently read:

35. (1) Where, after separate examinations by each of them,

(a) a therapist and a physician, or

(b) two physicians,

are of the opinion that a formal patient is incapable of managing his affairs, they may issue a certificate of incapacity in the prescribed form.

(2) The certificate of incapacity shall show

(a) the names of

(i) the therapist and the physician, or

(ii) the two physicians

issuing it,

(b) the date that each examination was made,

(c) the facts upon which the therapist (where appropriate) and each physician formed his opinion that the formal patient was incapable of managing his affairs, distinguishing the facts observed by him from the facts communicated to him by others,

(d) the date and time of issue, and

(e) the signatures of the persons issuing the certificate.

5. Section 37.1 is amended

- (a) as to subsection (1) by striking out the word "affairs" and substituting the word "estate",*
- (b) as to subsection (2), clause (c) by striking out the word "affairs" and substituting the word "estate".*

6. Section 43, subsection (1), clause (a) is amended by striking out the word "affairs" and substituting the word "estate".

7. Section 46 is amended by striking out subsection (5) and substituting the following subsection:

(5) An appeal under this section shall be a rehearing of the matter on the merits, and in addition to any further evidence adduced by the applicant, the Minister or the Public Trustee, the Court may direct that any transcript or minutes taken by the review panel at the original hearing of the evidence be put in evidence on the appeal and may direct such further evidence be given as it considers necessary.

8. Section 51 is struck out and the following section substituted:

51. (1) Notwithstanding any admission certificates or renewal certificates issued with respect to a formal patient, the medical director of a facility may grant a formal patient leave of absence from a facility.

(2) Leave of absence may be granted upon such terms and conditions as may be prescribed by the medical director and without restricting the generality of the foregoing may include a condition that the formal patient remain under the supervision and subject to the treatment of such person or persons as may be authorized by the medical director.

(3) Where a formal patient is on a leave of absence granted under this section and it appears to the medical director that the patient's condition is presenting a renewed danger to himself or others, the board may by notice in writing given to

(a) the formal patient, or

(b) the person supervising the patient,

revoke the leave of absence and recall the formal patient to the facility.

(4) Where a formal patient refuses to return to the facility or where the medical director is unable to serve a notice in writing pursuant to subsection (3), the medical director may declare the formal patient to be absent without leave and order any peace officer to return the person to the facility.

5. Section 37.1 (1) and (2) presently read:

37.1 (1) Where, after separate examinations by each of them,

- (a) a therapist and a physician, or
- (b) two physicians,

are of the opinion that a person who is the subject of a certificate of incapacity is capable of managing his affairs, they may issue an order cancelling the certificate of incapacity.

(2) The order cancelling the certificate of incapacity shall show

- (a) the names of
 - (i) the therapist and the physician, or
 - (ii) the two physicians,who issued it,
- (b) the date that each examination was made,
- (c) the facts on which the therapist (where appropriate) and each physician formed his opinion that the person concerned was capable of managing his affairs, distinguishing the facts observed by him from the facts communicated to him by others,
- (d) the date of issue, and
- (e) the signatures of the persons issuing it.

6. Section 43 (1) presently reads:

43. (1) Where an application is made to a review panel for the cancellation of a certificate of incapacity, the review panel may

- (a) cancel the certificate of incapacity where it considers that the applicant is capable of managing his affairs, or
- (b) refuse to cancel the certificate of incapacity.

7. Section 46 (5) presently reads:

(5) In addition to the evidence adduced by the applicant, the Court may direct such further evidence to be given as it considers necessary.

8. Section 51 presently reads:

51. (1) Notwithstanding any admission certificates or renewal certificates, a board may grant a formal patient leave of absence from a facility for a period not exceeding one month.

(2) Leave of absence may be granted upon such terms and conditions as may be prescribed.

(3) Subsection (1) does not authorize the granting of a leave of absence to a patient where he is subject to detention otherwise than under this Act.

(5) Nothing in this section authorizes the granting of a leave of absence to a formal patient who is

- (a) detained pursuant to a warrant of the Lieutenant Governor, or
- (b) remanded to a facility pursuant to the *Criminal Code*.

9. Section 56 is amended

(a) *by striking out subsection (2) and substituting the following:*

(2) Upon receipt of

- (a) an order pursuant to subsection (1), or
- (b) an order pursuant to section 51, subsection (4)

every peace officer is empowered to arrest, without warrant, the person named therein and return that person to the facility.

(b) *as to subsection (3) by adding after the word "section" the words "or section 51".*

10. Section 59, subsection (1) is amended by striking out the word "may" and substituting the word "shall".

11. Section 60, subsection (2), clause (k) is amended by adding after the words "Provincial Mental Health Advisory Council" the words ", members and alternate members of Regional Mental Health Councils".

12. Section 63 is amended by adding the following subsections after subsection (4):

(5) Notwithstanding subsection (4), where after reasonable inquiry the Public Trustee is unable to locate a person referred to in subsection (1), the Public Trustee may apply to a judge of the Supreme Court for an order cancelling the certificate of incapacity deemed to have been issued under subsection (2).

(6) Upon an application by the Public Trustee pursuant to subsection (5), the judge may

- (a) require the Public Trustee to make a further attempt to locate the person who is the subject of the certificate of incapacity, or
- (b) where he is satisfied that sufficient attempt has been made to locate the person, cancel the certificate of incapacity.

(7) Upon an order of a judge of the Supreme Court cancelling a certificate of incapacity under subsection (6),

9. Section 56 presently reads:

56. (1) Where a formal patient leaves a facility and leave of absence has not been granted, the board may order any peace officer to return the person to the facility.

(2) Upon receipt of an order pursuant to subsection (1), every peace officer is empowered to arrest, without warrant, the person named therein and return him to the facility.

(3) For the purposes of this Act, a formal patient who is returned to a facility under this section may be detained for the remainder of the authorized period of detention to which he was subject when his absence was discovered.

10. Section 59 (1) presently reads:

59. (1) All expenses incurred in connection with the examination, admission, detention, conveyance, care and maintenance of any person under this Act may be paid in the first instance by the Government.

11. Section 60 (2) (k) presently reads:

(2) The Lieutenant Governor in Council may make regulations

(k) prescribing the remuneration and expenses to be paid to members of the registration board, the members and alternate members of the Provincial Mental Health Advisory Council and the members and alternate members of review panels;

12. Section 63 presently reads:

63. (1) This section, section 64 and section 65 apply to those persons in respect of whose estate the Public Trustee is the committee on the date this Act comes into force, pursuant to section 12 of The Public Trustee Act.

(2) A certificate of incapacity is deemed to have been issued with respect to each person referred to in subsection (1).

(3) Any person referred to in subsection (1) may apply to a review panel for cancellation of the certificate of incapacity pursuant to section 38.

(4) Where any person referred to in subsection (1) does not apply to a review panel for cancellation of his certificate of incapacity within three months of the date this Act comes into force, the Public Trustee shall refer his case to a review panel within one year thereafter.

the Public Trustee shall with respect to the estate of the person

- (a) in the case of money, pay it to the Provincial Treasurer, and
 - (b) in the case of any other personal property or any real property, sell it and pay the proceeds to the Provincial Treasurer.
- (8) The Provincial Treasurer
- (a) when a person claims to be entitled to money or proceeds of sale paid to the Provincial Treasurer under this section,
 - (b) if satisfied as to the claimants' rights, and
 - (c) if authorized by an order of the Lieutenant Governor in Council to do so.

shall pay the money to the claimant with such interest thereon as is specified by the Lieutenant Governor in Council.

13. This Act comes into force on the day upon which it is assented to.