

1988 BILL 221

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Third Session, 21st Legislature, 37 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 221

MENTAL HEALTH PROTECTION ACT

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REV. ROBERTS

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 221*  
*Rev. Roberts*

## **BILL 221**

1988

### **MENTAL HEALTH PROTECTION ACT**

*(Assented to , 1988)*

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

**Definitions**

**1(1) In this Act,**

- (a) "attending physician" means the physician who is responsible for the examination, care and treatment of a patient of a psychiatric facility;
- (b) "chief administrative officer" means the person who is responsible for the administration and management of a psychiatric facility or a person designated in writing by such responsible person;
- (c) "designated health professional" means a member of a class of health professionals, other than physicians, designated in the regulations;
- (d) "Director" means the Director of Mental Health appointed pursuant to section 10;
- (e) "judge" means a judge of the Court of Queen's Bench;
- (f) "mental disorder" means a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life;

(g) "Minister" means the Minister of Hospitals and Medical Care;

(h) "patient advisor service" means the service or organization designated by the regulations as the patient advisor service and "patient advisor" means a representative or member of the staff of the patient advisor service;

(i) "physician" means a legally qualified medical practitioner;

(j) "psychiatric assessment" means an assessment of a person's mental condition by a physician under section 14;

(k) "psychiatric facility" means a facility for the examination, care and treatment of persons who suffer from a mental disorder, and is designated as such by the regulations;

(l) "psychiatrist" means a physician who holds a specialist's certificate in psychiatry from the College of Physicians and Surgeons of Canada or has qualifications which, in the opinion of the Minister, are equivalent thereto;

(m) "related medical treatment" means medical treatment or procedures necessary for

(i) the safe and effective administration of the psychiatric treatment, or

(ii) the control of the unwanted effects of the psychiatric treatment;

(n) "Review Board" means a review board established under section 33.

(2) For the purpose of consent under this Act, a person is mentally competent if the person is able to understand the subject-matter in respect of which consent is requested and able to appreciate the consequences of giving or refusing consent; and, where the consent is related to a proposed treatment for the person, the subject-matter is the nature of the person's illness and the nature of the proposed treatment.

Purposes

**2 The purposes of this Act are:**

- (a) to protect persons from dangerous behaviour caused by mental disorder;
- (b) to provide treatment for persons suffering from a mental disorder that is likely to result in dangerous behaviour;
- (c) to provide when necessary for such involuntary examination, custody, care, treatment and restraint as are the least restrictive and intrusive for the achievement of the purposes set out in clauses (a) and (b);
- (d) to protect the rights of persons who require or may require treatment for a mental disorder;
- (e) to provide for the return of patients to the community as soon as possible.

Physician's  
opinion as to  
mental  
competence

**3(1)** A physician who is of the opinion that an involuntary patient is not mentally competent to consent for a purpose under this Act shall complete and file with the chief administrative officer a certificate that the patient is not mentally competent to consent.

(2) A physician who is of the opinion that a person other than an involuntary patient is not mentally competent to consent for a purpose under this Act shall, at the request of the person but not otherwise, complete and file with the chief administrative officer a certificate that the person is not mentally competent to consent.

(3) The physician shall include in the certificate written reasons for the opinion that the involuntary patient or other person is not mentally competent.

(4) The chief administrative officer shall give to the involuntary patient or other person a copy of the certificate and written notice that the patient or other person is entitled to have the physician's opinion reviewed by the Review Board if the patient or other person gives a written request for the review to the Review Board.

(5) If an application is made to the Review Board to review a physician's opinion that an involuntary patient is or is not mentally competent to consent, neither a physician nor the chief administrative officer shall act upon the opinion pending the outcome of the application.

(6) A finding by a court or by the Review Board that an involuntary patient is mentally competent or is not mentally competent applies only for the purposes for which the proceeding is held.

Consent on  
behalf of patient

4(1) For the purposes of this Act, a consent may be given or refused on behalf of an involuntary patient of a psychiatric facility who has not reached the age of 16 years or who is not mentally competent by a person who has reached the age of 16 years, is apparently mentally competent, is available and willing to make the decision to give or refuse the consent and is:

- (a) the patient's guardian appointed by a court of competent jurisdiction;
- (b) the person appointed under this Act to make decisions on behalf of the patient;
- (c) a person living in a conjugal relationship with the patient;
- (d) a child of the patient, a parent of the patient or a person who has lawful authority to stand in the place of a parent;
- (e) a brother or sister of the patient; or
- (f) any other next of kin of the patient.

(2) If a person in a category in subsection (1) refuses consent on the patient's behalf the consent of a person in a subsequent category is not valid.

(3) If 2 or more persons who are not described in the same clause of subsection (1) claim the authority to give or refuse consent under that subsection, the one under the clause occurring first in that subsection prevails.

(4) A person referred to in subsection (1)(c) to (f) shall not exercise the authority given by that subsection unless the person,

- (a) has been in personal contact with the patient over the preceding 12-month period;
  - (b) is willing to assume the responsibility for consenting or refusing consent;
  - (c) knows of no conflict or objection from any other person in the list set out in subsection (1) in an equal or higher category who claims the right to make the decision; and
  - (d) makes a statement in writing certifying the person's relationship to the patient and the facts and beliefs set out in clauses (a) to (c).
- (5) A person authorized by subsection (1) to consent on behalf of a patient shall, where the wishes of the patient, expressed when he or she was mentally competent and 16 or more years of age, are clearly known, give or refuse the consent in accordance with those wishes and shall otherwise give or refuse the consent in accordance with the best interest of the patient.
- (6) In order to determine the best interest of the patient in relation to specified psychiatric treatment and other related medical treatment, regard shall be had to,
- (a) whether or not the mental condition of the patient will be or is likely to be substantially improved by the specified psychiatric treatment;
  - (b) whether or not the mental condition of the patient will improve or is likely to improve without the specified psychiatric treatment;
  - (c) whether or not the anticipated benefit from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and
  - (d) whether or not the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c).

(7) Whoever seeks a person's consent on a patient's behalf is entitled to rely on that person's statement in writing as to the person's relationship with the patient and as to the facts and beliefs mentioned in subsection (4)(a) to (c), unless it is unreasonable to believe the statement.

(8) The person seeking the consent is not liable for failing to request the consent of a person entitled to give or refuse the consent on the patient's behalf, if the person seeking the consent made reasonable inquiries for persons entitled to give or refuse the consent but did not find the person.

Patient advisor  
service

5(1) The Lieutenant Governor in Council may make regulations designating a service as a patient advisor service.

(2) Appointments as patient advisors shall be made by the Lieutenant Governor in Council after consultation with the Alberta executive of the Canadian Mental Health Association, the Law Society of Alberta and the Alberta Friends of Schizophrenics.

(3) It is the duty of a patient advisor service to offer advice and assistance to every involuntary patient in a psychiatric facility and to provide a patient advisor to meet, confer with and advise and assist every involuntary patient who wants such advice and assistance.

(4) The chief administrative officer shall ensure that the patient advisor service is given notice of,

(e) each decision to admit an involuntary patient to a psychiatric facility;

(b) each decision to change the status of a voluntary patient to that of an involuntary patient or to change the status of an involuntary patient to that of a voluntary patient;

(c) the filing of each certificate of renewal in respect of an involuntary patient;

(d) every application to the Review Board in respect of an involuntary patient; and

(e) every determination by a physician that an involuntary patient is not mentally competent.

(4) A patient advisor has the right at all reasonable times to meet and confer with an involuntary patient in a psychiatric facility.

Recommendation  
for involuntary  
psychiatric  
assessment

6(1) A physician or designated health professional who has examined a person may recommend involuntary psychiatric assessment of the person, if the physician or designated health professional is of the opinion the available tests, observations and other evidence indicate that the person is apparently suffering from mental disorder and if either:

(a) the physician or designated health professional has reasonable cause to believe that the person, as a result of the mental disorder,

(i) is threatening or attempting to cause bodily harm to himself or herself, or has recently done so,

(ii) is behaving violently towards another person, or has recently done so, or

(ii) is causing another person to fear bodily harm, or has recently done so,

and the physician or designated health professional is of the opinion that the person, as a result of the mental disorder, is likely to cause serious bodily harm to himself or herself or to another person; or

(b) the physician or designated health professional has reasonable cause to believe that the person, as a result of the mental disorder, shows or has recently shown a lack of ability to care for himself or herself and the physician or designated health professional is of the opinion that the person, as a result of the mental disorder, is likely to suffer impending serious physical impairment.

(2) The recommendation shall be in the form prescribed by the regulations and the physician or designated health professional who signs the recommendation,

(a) shall set out in the recommendation,



(i) that the physician or designated health professional personally examined the person who is the subject of the recommendation,

(ii) the date on which the physician or designated health professional examined the person,

(ii) that the physician or designated health professional made careful inquiry into the facts necessary to form an opinion as to the nature and degree of severity of the person's mental disorder, and

(iv) the reasons for the recommendation, including the facts upon which the physician or designated health professional bases his or her opinion as to the nature and degree of severity of the person's mental disorder and its likely consequences; and

(b) shall distinguish in the recommendation between facts observed by the physician or designated health professional and facts communicated to the physician or designated health professional by another person.

(3) The recommendation is not effective unless the physician or designated health professional signs it within 48 hours after the examination.

Judge's order for  
examination

7(1) Any person may make a written statement under oath or affirmation before a judge requesting an order for the involuntary examination of another person by a physician or designated health professional and setting out the reasons for the request, and the judge shall receive the statement.

(2) A judge who receives a statement under subsection (1) shall consider the statement and, where the judge considers it desirable to do so, hear and consider without notice the allegations of the person who made the statement and the evidence of any witnesses.

(3) The judge may issue an order for the involuntary examination of the other person by a physician or designated health professional if the judge has reasonable cause to believe that the person is apparently suffering from mental disorder and will not consent to undergo examination by a physician or designated health professional and also that either:

(a) as a result of the mental disorder, the person,

(i) is threatening or attempting to cause bodily harm to himself or herself, or has recently done so,

(ii) is behaving violently towards another person, or has recently done so, or

(iii) is causing another person to fear bodily harm, or has recently done so,

and the person is likely to cause serious bodily harm to himself or herself or to another person; or

(b) as a result of the mental disorder, the person shows or has recently shown a lack of ability to care for himself or herself and is likely to suffer impending serious physical impairment.

(4) Where the judge considers that the criteria set out in subsection (3) have not been established, the judge shall so endorse the statement.

(5) An order under subsection (3) for the involuntary examination of a person by a physician or designated health professional shall direct one or more of,

(a) a member of a police force named in the order;

(b) an individual named in the order; or

(c) an individual of a class named in the order or designated in the regulations,

to take the person named or described in the order into custody and take the person forthwith to a place where the person may be detained for the involuntary examination.

Police officer

**8** A police officer may take a person into custody and take him or her forthwith to a place for involuntary examination by a physician or designated health professional, if the police officer has reasonable cause to believe that the person is apparently suffering from mental disorder, that the person will not consent to undergo examination by a physician or designated health professional and that it is not feasible in the circumstances to make application to a judge for an order for involuntary examination by a physician or designated health professional, and if either:

(a) the police officer has reasonable cause to believe that the person, as a result of the mental disorder,

(i) is threatening or attempting to cause bodily harm to himself or herself, or has recently done so,

(ii) is behaving violently towards another person, or has recently done so, or

(iii) is causing another person to fear bodily harm, or has recently done so,

and the officer is of the opinion that the person, as a result of the mental disorder, is likely to cause serious bodily harm to himself or herself or to another person; or

(b) the police officer has reasonable cause to believe that the person, as a result of the mental disorder, shows or has recently shown a lack of ability to care for himself or herself, and the police officer is of the opinion that the person, as a result of the mental disorder, is likely to suffer impending serious physical impairment.

Time of  
examination

**9(1)** Where a person is taken into custody for involuntary examination by a physician or designated health professional under this Act, the examination shall take place forthwith after the person arrives at the place of examination.

**(2)** Where practicable, the place of examination shall be a psychiatric facility or other appropriate health care setting.

Director  
appointed

10(1) The Minister shall appoint, pursuant to the *Public Service Act*, a Director of Mental Health.

(2) Where the Director has reasonable cause to believe that a person who is an involuntary patient in a psychiatric facility outside Alberta may come or be brought into Alberta and the Director has reasonable cause to believe that the prerequisites for admission as an involuntary patient set out in section 14(1) are likely to be met, the Director may issue an order that the person be taken to a psychiatric facility for an involuntary psychiatric assessment.

Duty to inform

11(1) A police officer or other person who takes a person into custody for the purpose of taking the person for an involuntary examination by a physician or designated health professional or for an involuntary psychiatric examination under this Act shall promptly inform the person,

- (a) where the person is being taken;
- (b) that the person is being taken for an involuntary examination by a physician or designated health professional or for an involuntary psychiatric assessment, as the case may be, and the reasons therefor; and
- (c) that the person has the right to retain and instruct counsel without delay.

(2) The police officer or other person who takes a person into custody for a purpose mentioned in subsection (1) shall use his or her best efforts to be sure that the person's nearest family member is informed as soon as practicable that the person has been taken into custody, the reason for taking the person into custody and the place where the person is being detained or to which the person is being taken.

(3) Upon arrival at the place of examination or involuntary psychiatric assessment, and again as soon thereafter as the person appears to be mentally competent to understand the information, the individual in charge of the place shall ensure that the person is informed promptly,

- (a) where the person is being detained;

(b) the reason for the detention; and

(c) that the person has the right to retain and instruct counsel without delay.

Duty to retain  
custody

12(1) A police officer or other person who takes a person into custody to take the person for involuntary examination by a physician or designated health professional or to take the person to a psychiatric facility shall remain at the place of examination or at the facility and shall retain custody of the person until the examination is completed or the psychiatric facility accepts custody of the person, as the case may be.

(2) Where a person is taken to a psychiatric facility or other health facility for involuntary examination by a physician or designated health professional or for an involuntary psychiatric assessment and it is decided not to recommend involuntary psychiatric assessment of the person or it is decided not to admit the person as a patient of the psychiatric facility, as the case may be, the person in charge of the psychiatric facility or other health facility shall promptly inform the person that the person has the right to leave the psychiatric facility and, unless the person indicates otherwise, shall arrange and pay for the return of the person to the place where the person was taken into custody or, at the person's request, to some other appropriate place.

Involuntary  
psychiatric  
assessment

13 A recommendation by a physician or designated health professional or an order under this Act by the Director for involuntary psychiatric assessment of a person is sufficient authority,

(a) for any police officer or other person to take the person into custody as soon as possible, but not later than 7 days from and including the day that the recommendation is signed or the order is issued, and to take the person to a psychiatric facility as soon as possible;

(b) to detain, restrain and observe the person in a psychiatric facility for not more than 48 hours; and

(c) for a physician, preferably a psychiatrist, to examine the person and assess the person's mental condition for the purposes of section 14.

14(1) A physician who has examined a person in a psychiatric facility and who has assessed the person's mental condition may admit the person as an involuntary patient of the psychiatric facility by completing and filing with the chief administrative officer a certificate of involuntary admission in the form prescribed by the regulations if,

(a) the physician is of the opinion that the person is suffering from mental disorder that, unless the person remains in the custody of a psychiatric facility, is likely to result in,

(i) serious bodily harm to the person or to another person, or

(ii) the person's serious physical impairment; and

(b) the physician is of the opinion that the person is not suitable for admission as a voluntary patient.

(2) A physician who has examined a person in a psychiatric facility and who has assessed the person's mental condition may admit him or her as a voluntary patient of the psychiatric facility if the physician is of the opinion that the person is suffering from mental disorder, is in need of the psychiatric treatment provided in a psychiatric facility and is suitable for admission as a voluntary patient.

(3) A physician who has examined a person in a psychiatric facility, has assessed the person's mental condition and is of the opinion that the prerequisites set out in this section for admission as an involuntary patient or as a voluntary patient are not met shall release the person, subject to any detention that is lawfully authorized otherwise than under this Act.

(4) A physician who completes a recommendation for involuntary psychiatric assessment of a person shall not complete the certificate of involuntary admission in respect of the person.

(5) If, after 48 hours of detention, the person has not been,

(a) admitted to the psychiatric facility as an involuntary patient under subsection (1) or as a voluntary patient under subsection (2); or

(b) released by a physician under subsection (3),

the chief administrative officer shall ensure that the person is promptly informed that the person has the right to leave the psychiatric facility, subject to any detention that is lawfully authorized otherwise than under this Act.

(6) The physician who signs the certificate of involuntary admission,

(a) shall set out in the certificate,

(i) that the physician personally examined the person who is the subject of the certificate,

(ii) the date or dates on which the physician examined the person,

(iii) the physician's opinion as to the nature and degree of severity of the person's mental disorder,

(iv) the physician's diagnosis or provisional diagnosis of the person's mental disorder,

(v) the reasons for the certificate including the facts upon which the physician bases his or her opinion as to the nature and degree of severity of the mental disorder and its likely consequences; and

(b) shall distinguish in the certificate between facts observed by the physician and facts communicated to the physician by another person.

Change from  
voluntary to  
involuntary  
patient

**15** After examining a voluntary patient and assessing the patient's mental condition, the attending physician may change the status of the patient to that of an involuntary patient by completing and filing with the chief administrative officer a certificate of involuntary admission that meets the requirements of section 14(6), if the prerequisites for admission as an involuntary patient set out in section 14(1) are met.

Person detained  
under Criminal  
Code (Canada),  
RSC 1970, c.  
C-34

**16** Where a person has been detained under the *Criminal Code* (Canada) as unfit to stand trial, not criminally responsible on account of mental disorder or not guilty by reason of insanity and the person's detention under the *Criminal Code* (Canada) is about to expire, a physician, who shall be a psychiatrist, if one is available at that time at the facility, who is employed in or is on the staff of a psychiatric facility, may examine the person and assess the person's mental condition and may, if the prerequisites for admission as an involuntary patient set out in section 14(1) are met, admit the person as an involuntary patient of the psychiatric facility by completing and filing with the chief administrative officer a certificate of involuntary admission that meets the requirements of section 14(6).

Re-assessment  
certificate or  
renewal

**17(1)** Shortly before the expiry of a certificate of involuntary admission or a certificate of renewal, the attending physician shall examine the patient and assess the patient's mental condition and may renew the patient's status as an involuntary patient by completing and filing with the chief administrative officer a certificate of renewal, if the prerequisites for admission as an involuntary patient set out in section 14(1) are met.

(2) If the attending physician does not renew the patient's status as an involuntary patient, the physician shall promptly inform the patient that the patient has the right to leave the psychiatric facility, subject to any detention that is lawfully authorized otherwise than under this Act.

(3) Section 14(6), which relates to the contents of a certificate of involuntary admission, applies with necessary modifications in respect of a certificate of renewal.

(4) An involuntary patient may be detained, restrained, observed and examined in a psychiatric facility,

(a) for not more than 2 weeks under a certificate of involuntary admission; and

(b) for not more than,

(i) one additional month under a first certificate of renewal,



(ii) 2 additional months under a second certificate of renewal, and

(iii) 3 additional months under a third or subsequent certificate of renewal.

Examination of  
certificate

**18(1)** Forthwith after the filing of a certificate of involuntary admission or a certificate of renewal, the chief administrative officer shall examine the certificate to ascertain whether or not the certificate has been completed in accordance with this Act.

(2) If, in the opinion of the chief administrative officer, the certificate has not been completed substantially in accordance with this Act before the expiry of the period of detention authorized by this Act, the chief administrative officer shall ensure that the physician or attending physician is so informed.

Change from  
involuntary to  
voluntary patient

**19(1)** An involuntary patient whose authorized period of detention has expired shall be deemed to be a voluntary patient.

(2) If at any time the attending physician is of the opinion,

(a) that the prerequisites for admission as an involuntary patient set out in section 14(1) are no longer met; and

(b) that the prerequisites for admission as a voluntary patient set out in section 14(2) are met,

the attending physician shall change the status of an involuntary patient to that of a voluntary patient by completing and filing with the chief administrative officer a certificate of change of status.

(3) Where a patient's status changes or is changed to that of a voluntary patient, the chief administrative officer shall ensure that the patient is promptly informed that the patient is a voluntary patient and has the right to leave the psychiatric facility, subject to any detention that is lawfully authorized otherwise than under this Act.

Transfer of  
patients to  
institutions  
outside enacting  
jurisdiction

**20** Where it appears to the Director

(a) that an involuntary patient in a psychiatric facility has come or been brought into Alberta from elsewhere and the patient's hospitalization is the responsibility of another jurisdiction; or

(b) that it would be in the best interest of an involuntary patient in a psychiatric facility to be hospitalized in another jurisdiction and the patient consents to the transfer to the other jurisdiction,

and the Director has arranged for the patient's hospitalization in the other jurisdiction, the Director may by order authorize the patient's transfer to the other jurisdiction.

Information as to  
patient's status

21(1) A physician who admits an involuntary patient or who completes and files a certificate of renewal or a certificate of change of status to that of an involuntary patient shall promptly inform the patient in writing,

(a) that the patient has been admitted or continued as an involuntary patient or had his or her status changed to that of an involuntary patient, as the case requires, of the psychiatric facility and the reasons therefor;

(b) that the patient has the right to apply to the Review Board for a review of his or her status; and

(c) that the patient has the right to retain and instruct counsel without delay.

(2) If, at the time of admission or renewal, the patient is apparently incapable of understanding the information mentioned in subsection (1), the physician shall give or shall make reasonable efforts to give the information in writing to a person who would be able to give or refuse a consent on behalf of the patient under section 4.

Substitute  
decision maker

22(1) A patient of a psychiatric facility who is at least 16 years of age and who is mentally competent to do so has the right to appoint in writing a person to make decisions for the purposes of this Act on behalf of the patient while the patient is an involuntary patient.

(2) A physician who admits a patient to a psychiatric facility or who changes the status of a voluntary patient to that of an involuntary patient shall promptly inform the patient in writing of the patient's right under subsection (1).

(3) The notice by the physician shall be in the form prescribed by the regulations and shall inform the patient of the duties of the chief administrative officer under this section and the powers and responsibilities of a person appointed to make decisions for the purposes of this Act on behalf of the patient.

(4) If a patient gives or transmits to the chief administrative officer a statement in writing appointing a person to make decisions for the purposes of this Act on behalf of the patient, the chief administrative officer shall transmit a copy of the statement to the person forthwith.

(5) A patient who has appointed a person to make decisions for the purposes of this Act on behalf of the patient may revoke in writing the appointment and may appoint in writing a new person while mentally competent to do so, and subsection (4) applies with necessary modifications in respect to the revocation and new appointment.

(6) The chief administrative officer shall ensure that the person appointed to make decisions is given notice of,

(a) the decision to admit or to change the status of the patient;

(b) the filing of each certificate of renewal in respect of the patient;

(c) every application to the Review Board in respect of the patient; and

(d) every determination by a physician that the patient is not mentally competent.

(7) A person appointed to make decisions for the purposes of this Act on behalf of a patient has the right at all reasonable times to meet and confer with the patient.

**23(1) On application, the Review Board shall promptly review a patient's status to determine whether or not the prerequisites for admission as an involuntary patient set out in section 14(1),**

**(a) were met when the certificate of admission or the certificate of renewal, as the case requires, was filed in respect of the patient; and**

**(b) continue to be met at the time of the hearing of the application.**

**(2) The Review Board by order may confirm the patient's status as an involuntary patient if the Review Board determines that the prerequisites for admission as an involuntary patient set out in section 14(1),**

**(a) were met when the certificate was filed and continued to be met at the time of the hearing of the application; or**

**(b) were not met when the certificate was filed but were met at the time of the hearing of the application.**

**(3) The Review Board by order shall rescind the certificate if the Review Board determines that the prerequisites for admission as an involuntary patient set out in section 14(1)**

**(a) were not met when the certificate was filed and were not met at the time of the hearing of the application; or**

**(b) were met when the certificate was filed but did not continue to be met at the time of the hearing of the application.**

**(4) An order of the Review Board confirming or rescinding a certificate applies to the certificate of involuntary admission or the certificate of renewal in force immediately before the making of the order.**

6-month review

**24(1)** On the filing of a fourth certificate of renewal and on the filing of every second certificate of renewal thereafter, the patient shall be deemed to have applied to the Review Board for review of the status of the patient to determine whether or not the prerequisites for admission as an involuntary patient set out in section 14(1) continued to be met when the certificate was filed and continued to be met at the time of the hearing of the application.

(2) As part of the review, the Review Board shall arrange for the examination of the patient by a second physician, preferably a psychiatrist, and shall obtain the opinion of the second physician as to whether or not the prerequisites set out in section 14(1) for admission as an involuntary patient continue to be met at the time of the hearing of the application.

Treatment

**25(1)** An involuntary patient of a psychiatric facility has the right not to be given psychiatric treatment or other medical treatment unless there is a prior

(a) consent by the patient;

(b) consent given on behalf of the patient in accordance with section 4; or

(c) order of the Review Board authorizing the giving of specified psychiatric treatment and other related medical treatment.

(2) Medical treatment may be given without the patient's consent to an involuntary patient of a psychiatric facility who, in the opinion of a physician, is not mentally competent or is under 16 years of age where the physician has reasonable and probable grounds to believe that there is imminent and serious danger to the life, a limb or a vital organ of the patient requiring immediate medical treatment.

(3) Where the attending physician is of the opinion that an involuntary patient is not mentally competent to consent to specified psychiatric treatment or other related medical treatment and the patient objects to the treatment, the treatment shall not be given pursuant to the consent of a person described in section 4(1)(c) to (f) unless a second physician is also of the opinion that the patient is not mentally competent to consent to the treatment.

**26(1)** The attending physician of an involuntary patient may apply to the Review Board for an order authorizing the giving of specified psychiatric treatment and other related medical treatment to the patient if,

- (a) the patient, or a person acting for the patient under section 4 has refused consent to the patient's being given the specified psychiatric treatment or other related medical treatment;
- (b) there is no person available to give or refuse consent for the patient under section 4 and the patient is either under the age of 16 years or apparently is not mentally competent to consent; or
- (c) 2 or more persons described in the same clause of section 24(1), who do not agree among themselves, claim the authority to give or refuse consent for the patient.

**(2)** The Review Board shall not consider the application unless it is accompanied by statements signed by the attending physician and a psychiatrist who is not a member of the medical staff of the psychiatric facility, each stating that they have examined the patient and that they are of the opinion, stating the reasons of each of them, that,

- (a) the mental condition of the patient will be or is likely to be substantially improved by the specified psychiatric treatment;
- (b) the mental condition of the patient will not improve or is not likely to improve without the specified psychiatric treatment;
- (c) the anticipated benefit to the patient from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and
- (d) the specified psychiatric treatment and other related medical treatment are the least restrictive and least intrusive treatments that meet the requirements of clauses (a), (b) and (c).

(3) The Review Board by order may authorize the giving of the specified psychiatric treatment and other related medical treatment if the Review Board is satisfied that,

(a) the mental condition of the patient will be or is likely to be substantially improved by the specified psychiatric treatment;

(b) the mental condition of the patient will not improve or is not likely to improve without the specified psychiatric treatment;

(c) the anticipated benefit to the patient from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and

(d) the specified psychiatric treatment and other related medical treatment are the least restrictive and least intrusive treatments that meet the requirements of clauses (a), (b) and (c).

(4) An order may include terms and conditions and may specify the period of time during which the order is effective.

**Restraint**

27(1) The authority given in this Act to restrain a person is authority to keep the person under control to prevent harm to the person or to another person by the minimal use of such force, mechanical means or chemicals as is reasonable having regard to the physical and mental condition of the person.

(2) Measures necessary for the exercise of the authority given in this Act to restrain a person may be taken without the person's consent, but the measures shall be recorded in detail in the clinical record of the person's case and treatment in the psychiatric facility, including the entry in the clinical record of a statement that the person was restrained, a description of the means of restraint, a statement of the period of time during which the person was restrained and a description of the behaviour of the person that required that he or she be restrained or continued to be restrained.

(3) If a chemical restraint is used, the entry shall include a statement of the chemical used, the method of administration and the dosage administered.

Leave to live  
outside facility

28(1) The attending physician of an involuntary patient, in order to provide psychiatric treatment that is less restrictive and less intrusive to the patient than being detained in a psychiatric facility, may issue a certificate of leave allowing the patient to live outside the psychiatric facility subject to specific written conditions as to treatment.

(2) A certificate of leave is not effective without the patient's consent.

(3) The provisions of this Act respecting an involuntary patient continue to apply in respect of a patient who is subject to a certificate of leave.

(4) The attending physician may, by notice to the patient, vary the conditions as to treatment.

(5) The attending physician, by a certificate of cancellation of leave, may without notice cancel the certificate of leave for breach of a condition or if the attending physician is of the opinion that the treatment specified in the certificate of leave is not effective.

(6) A certificate of cancellation of leave is sufficient authority for one month after it is signed for a police officer to take the patient named in it into custody and take the patient forthwith to a psychiatric facility.

(7) On application, the Review Board shall review the status of the patient to determine whether or not there has been a breach of a specific written condition of the certificate of leave or whether or not the treatment specified in the certificate of leave has been ineffective, and the Review Board by order may confirm or rescind the certificate of cancellation of leave.

(8) The certificate of cancellation of leave is effective pending the order of the Review Board.

Patient access to  
clinical record

29(1) A person who has attained 16 years of age and is mentally competent is entitled to examine and to copy the clinical record or a copy of the clinical record of the person's examination, assessment, care and treatment in a psychiatric facility.



(2) Subject to subsection (3), the chief administrative officer shall give the person access to the clinical record.

(3) The chief administrative officer, within 7 days after the person asks to examine the clinical record, may apply to the Review Board to authorize the withholding of all or part of the clinical record.

(4) Upon the application, the Review Board shall review the clinical record and by order shall direct the chief administrative officer to give the person access to the clinical record unless the Review Board is of the opinion that disclosure of the clinical record is likely to result in serious harm to the treatment or recovery of the person while the person is a patient or is likely to result in serious physical harm or serious emotional harm to another person.

(5) Where, in the Review Board's opinion, disclosure of a part of the clinical record is likely to have a result mentioned in subsection (4), the Review Board shall mark or separate the part and exclude the marked or separated part from the application of the order.

(6) The person and the chief administrative officer are each entitled to make submissions to the Review Board in the absence of the other before the Review Board makes its decision.

(7) If the person is allowed to examine the clinical record or a part or copy of the clinical record, the person is entitled,

(a) to request correction of the information in the clinical record, if the person believes there is an error or omission in the clinical record;

(b) to require that a statement of disagreement be attached to the clinical record reflecting any correction that is requested but not made; and

(c) to require that notice of the amendment or statement of disagreement be given to any person or organization to whom the clinical record was disclosed within the year before the amendment was requested or the statement or disagreement was required.

**30(1) No person shall disclose information in respect of the mental condition or care or treatment of another person as a patient of a psychiatric facility.**

**(2) Subsection (1) applies in respect of information obtained by the person,**

- (a) in the course of assessment, care or treatment of the patient;**
- (b) in the course of employment in the facility;**
- (c) from a person who obtained the information in the manner described in clause (a) or (b); or**
- (d) from a clinical record or other record kept by the facility.**

**(3) Notwithstanding subsection (1), the chief administrative officer may disclose information in respect of a patient or former patient at the request of the patient or former patient or, at the request of another person, with the consent of the patient or former patient.**

**(4) Notwithstanding subsection (1), the chief administrative officer may disclose information,**

- (a) with a consent given on behalf of the patient in accordance with section 24;**
- (b) for the purpose of research, academic pursuits or the compilation of statistical data; or**
- (c) to the chief administrative officer of a psychiatric facility or other health facility to which the patient is transferred, admitted or referred.**

**(5) If no person claims the authority to give or refuse a consent in accordance with section 4 or if 2 or more persons described in the same clause of section 4(1), who do not agree among themselves, claim the authority, the person seeking the consent may apply to the Review Board.**

(6) The Review Board by order shall, where the wishes of the patient, expressed when he or she was mentally competent and 16 or more years of age, are clearly known, give or refuse the consent in accordance with those wishes and shall otherwise give or refuse the consent in accordance with the best interest of the patient.

(7) Notwithstanding subsection (1), information may be disclosed,

(a) for the purpose of the assessment, care or treatment of the patient in the psychiatric facility;

(b) for the purpose of the assessment, care or treatment of the former patient in another health facility;

(c) to a physician in charge of the patient's care;

(d) to a board or committee or the counsel or agent of a board or committee of a health facility or of the governing body of a health profession, for the purpose of an investigation or assessment of the care or treatment provided by a member of the health profession, or for the purpose of a discipline proceeding against a member of the health profession;

(e) to the Review Board for the purpose of a hearing;

(f) in compliance with an Act;

(g) to a court for examination under this section; or

(h) in compliance with a court order under this section.

(8) If an application for review of a decision as to mental competence in connection with consent to a proposed disclosure is made to the Review Board, the disclosure shall not be made until the matter is finally determined.

(9) A person to whom information is disclosed under subsection (4) for the purpose of research, academic pursuits or the compilation of statistical data shall not disclose the name of or any means of identifying a patient and shall not use or communicate the information for a purpose other than research, academic pursuits or the compilation of statistical data.

(10) Where the disclosure of information mentioned in subsection (1) is required in a proceeding before a court, the court upon motion may order the disclosure of the information.

(11) Where the disclosure of information mentioned in subsection (1) is required in a proceeding before a tribunal that is not a court, the Court of Queen's Bench, upon application, may order the disclosure of the information, refuse the application or order a partial or conditional disclosure or a disclosure to a specified person or persons.

(12) The court may examine the information without disclosing it to the party seeking the disclosure.

(13) The party seeking the disclosure and the chief administrative officer are each entitled to make submissions to the court in the absence of the other before the court makes its decision.

(14) If the court is satisfied that the disclosure of the information is likely to result in serious harm to the treatment or recovery of the person while the person is a patient or is likely to result in serious physical or emotional harm to another person, the court shall not order the disclosure of the information unless satisfied that to do so is essential in the interests of justice.

Amends c. 0-7,  
RSA 1980

31(1) *The Ombudsman Act is amended by this section.*

(2) *Section 1(a) is amended by adding "a psychiatric facility or any other facility in which an involuntary patient is held pursuant to the Mental Health Protection Act and" after "means".*

Offence

32 Every person who contravenes section 30 is guilty of an offence and on conviction is liable to a fine of not more than \$5000.

Review boards

33(1) The Lieutenant Governor in Council may establish review boards for psychiatric facilities or groups of psychiatric facilities.

(2) The Lieutenant Governor in Council may appoint the members of each review board for a term not to exceed 5 years.

(3) Every review panel shall be composed of

- (a) a chairman and a vice-chairman each of whom must be a lawyer;
- (b) a psychiatrist;
- (c) a physician; and
- (d) a member of the general public.

(4) A panel of not fewer than 3 members of a review board, including at least one psychiatrist, appointed to the panel by the chairman of the review board, may exercise all the jurisdiction and powers of the review board.

(5) Reference in this Act to a Review Board means the review board established for the psychiatric facility in connection with which the matter in question arises.

**Applications to  
Review Board**

**34(1) An application to a Review Board may be made**

- (a) to review a certificate of involuntary admission, a certificate of renewal or a certificate of cancellation of leave;
- (b) to authorize withholding of all or part of a clinical record from a person;
- (c) to review a physician's opinion that a person is or is not mentally competent to consent or refuse consent; or
- (d) to authorize specified psychiatric treatment and other related medical treatment.

(2) An application may be made by any person having a substantial interest in the subject-matter of the application.

(3) In every application to the Review Board, the applicant, the patient and the attending physician are parties and the chief administrative officer is entitled to be a party.

(4) In an application for authority to give treatment in a case where the consent of a person has been refused on the patient's behalf, the person is also a party.

(5) The Review Board may add as a party any person who, in the opinion of the Review Board, has a substantial interest in the matter under review.

Notice

**35** The Review Board shall give written notice of the application to every party, to every person who is entitled to be a party, and to any person who, in the opinion of the Review Board, may have a substantial interest in the subject-matter of the application.

Hearing

**36(1)** In every proceeding before the Review Board there shall be a hearing.

(2) Every party is entitled to be represented by counsel or agent in a hearing before the Review Board.

(3) Every party shall be given an opportunity to examine and to copy, before the hearing, any recorded evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(4) Every party is entitled to present such evidence as the Review Board considers relevant and to question witnesses.

(5) It is the duty of the Review Board to inform itself fully of the facts by means of the hearing and for this purpose the Review Board may require the attendance of witnesses and the production of documents in addition to the witnesses called and documents produced by the parties.

(6) Every proceeding before the Review Board shall be recorded and copies of documents filed in evidence or a transcript of the oral evidence shall be furnished only to the parties upon the same terms as in the proceedings before the Court of Queen's Bench.

(7) Subject to subsection (8), all Review Board hearings shall be closed to the public.

(8) The Review Board shall permit the public to be present during a hearing where,

(a) the patient consents; and

(b) there is, in the opinion of the Board, little risk of serious harm or injustice to any person.

Appeal to court

**37(1)** Any party to a proceeding before the Review Board may appeal from the final decision or order of the Review Board to the Court of Queen's Bench.

(2) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Review Board and may exercise all powers of the Review Board and for this purpose the court may substitute its opinion for that of the Review Board, or the court may refer the matter back to the Review Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

(3) If the final decision of the Review Board authorizes specified psychiatric treatment and other related medical treatment, the court on motion may make an interim order authorizing the giving of the specified psychiatric treatment and other related medical treatment pending the final disposition of the appeal.

Standard of proof

**38** In a proceeding under this Act before a judge, the Review Board or a court, the standard of proof is proof on the balance of probabilities.

Counsel for  
involuntary  
patient

**39** In a proceeding before the Review Board or on an appeal therefrom in respect of an involuntary patient of a psychiatric facility,

(a) the patient shall be deemed to have capacity to instruct counsel or agent; and

(b) if the patient does not have legal representation, the Review Board or the court, as the case may be, may direct that legal representation be provided for him or her.

Regulations

**40** For the purposes of this Act, the Lieutenant Governor in Council may make regulations,

(a) designating psychiatric facilities;

- (b) designating classes of psychiatric facilities;
- (c) designating classes of health professionals;
- (d) designating classes of individuals for the purposes of orders under section 7(5);
- (e) prescribing programs for the release of patients on a full-time, part-time or limited-time basis, to community life pursuant to section 28 or otherwise under the guidance and supervision of a physician or psychiatrist;
- (f) prescribing the manner in which applications may be made to a review board;
- (g) governing proceedings before review boards;
- (h) prescribing the time in which decisions of review boards shall be made;
- (i) prescribing forms and providing for their use.