



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **MENTAL HEALTH ACT**

## PLEASE NOTE

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

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## MENTAL HEALTH ACT

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## MENTAL HEALTH ACT

### CHAPTER M-6.1

#### PART I — INTERPRETATION AND ADMINISTRATION

##### 1. Definitions

In this Act

- (a) “**addiction assessment**” means an assessment of a person’s dependency on, addiction to, or abuse of drugs or alcohol, by a medical addiction consultant;
- (b) “**addiction examination**” means an examination of a person’s dependency on, addiction to, or abuse of drugs or alcohol, by a physician;
- (c) “**addiction treatment facility**” means a centre or facility operated by, or by an agency approved by, the Minister in which addiction treatment services are provided;
- (d) “**administrator**” means the officer who is responsible for the administration of a psychiatric facility;
- (e) “**attending psychiatrist**” means the psychiatrist who is responsible for the care and treatment of a patient of a psychiatric facility;
- (f) “**capable**” or “**incapable**” means mentally capable or incapable of making a decision to give or refuse consent to treatment;
- (g) “**clinical record**” means the clinical record, or any part thereof, compiled in a psychiatric facility with respect to a patient;
- (h) repealed by 2013, c.18, s.1;
- (i) repealed by 2008, c.20, s.72;
- (j) “**medical addiction consultant**” means a legally qualified medical practitioner working in association with an addiction treatment facility;
- (k) “**mental disorder**” means a substantial disorder of thought, mood, perception, orientation or memory that seriously impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life and includes a mental disorder resulting from alcohol or drug addiction or abuse, but a mental handicap or learning disability does not, of itself, constitute mental disorder;
- (l) “**Minister**” means the Minister of Health and Wellness;
- (m) “**peace officer**” means a police officer or other person employed for the preservation and maintenance of the public peace;
- (n) “**physician**” means a medical practitioner licensed to practise in the province;
- (o) “**psychiatric assessment**” means a complete assessment of a person’s mental condition by a psychiatrist under section 13;
- (p) “**psychiatric examination**” means a preliminary examination of a person’s mental condition by a physician under section 6;

- (q) “**psychiatric facility**” means a facility designated by regulation for the examination, care and treatment of persons who suffer from mental disorder;
- (r) “**psychiatrist**” means
  - (i) a physician whose specialist status in psychiatry is recognized by the College of Physicians and Surgeons of Prince Edward Island, or
  - (ii) for the purposes of psychiatric assessment, involuntary admission, change of status, certificates of renewal and qualification to serve on the Review Board, a physician with a specialized qualification recognized by the Minister;
- (s) “**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;
- (t) “**Review Board**” means the Review Board established under section 27. *1994, c.39, s.1; 2005, c.40, s.21; 2006, c.16, s.63(9); 2008, c.20, s.72(61); 2010, c.31, s.3; 2013, c.18, s.1.*

## RESPONSIBILITIES

### 2. Functions of the Minister

The Minister shall

- (a) determine the appropriate needs for mental health services;
- (b) establish, operate, designate or otherwise provide for places for the observation, examination, care, treatment, control and detention of persons suffering from mental disorder;
- (c) provide for mental health diagnostic and treatment centres, in-patient services, clinical services in the community, community residential services, rehabilitation services, consultation, public education, research and illness-prevention in various locations in Prince Edward Island;
- (d) oversee, coordinate and promote productive cooperation among all mental health care service providers; and
- (e) repealed by *2013, c.18, s.2. 1994, c.39, s.2; 2013, c.18, s.2.*

### 3. *Idem*

(1) The Minister may

- (a) assess the mental health needs of the public and design a strategy for meeting those needs;
- (b) formulate expectations and standards to govern the provision of mental health services;
- (c) initiate research designed to improve the provision of mental health services in the province;
- (d) consult with mental health service providers on the promotion of mental health and the prevention, care, treatment and control of mental disorders;
- (e) monitor the appropriateness of mental health services and provide direction in accordance with prescribed standards;
- (f) arrange interprovincial transfers of involuntary patients in accordance with section 22;
- (g) design and implement strategies for recruitment of mental health service personnel.



**Delegation of function**

- (2) The Minister may, in writing, delegate a function, or any aspect of a function, of the Minister under this Act to any person.

**Chief Mental Health and Addictions Officer**

- (3) The Minister may appoint a Chief Mental Health and Addictions Officer who shall report to the Minister. *1994, c.39, s.3; 2013, c.18, s.3.*

## PART II — ADMISSION TO PSYCHIATRIC FACILITIES

### 4. Admission to facility

Any person in Prince Edward Island who is suffering from mental disorder or is believed to be in need of treatment provided in a psychiatric facility may be admitted thereto as a voluntary patient or as an involuntary patient subject to the conditions and requirements established by this Act. *1994, c.39, s.4.*

## VOLUNTARY ADMISSION

### 5. Application for voluntary admission

- (1) Subject to subsection (2) any person in Prince Edward Island who believes himself or herself to be, or about to become, in need of treatment provided in a psychiatric facility may apply and be admitted to a psychiatric facility.

**Criteria for admission**

- (2) No person shall be admitted as a voluntary patient at a psychiatric facility unless, in the opinion of an examining physician, the person requires care and treatment that can be provided most appropriately in an in-patient psychiatric facility.

**Patient may leave**

- (3) A voluntary patient may, subject to subsections (4) and (5), leave the psychiatric facility at any time or refuse any treatment suggested.

**Request**

- (4) Where a patient contrary to medical advice wishes to leave a psychiatric facility pursuant to subsection (3), the patient shall sign a request for discharge.

**Detention of patient in the interests of safety**

- (5) Where a member of the treatment staff of the psychiatric facility has reasonable grounds to believe that a voluntary patient seeking to be discharged
- (a) is suffering from a mental disorder of a nature or degree so as to require hospitalization in the interests of the person's own safety or the safety of others; and
  - (b) is refusing to undergo psychiatric examination,
- the member may restrain the patient and arrange for a physician to examine the patient within eight hours in accordance with section 6. *1994, c.39, s.5.*

## PSYCHIATRIC EXAMINATION

### 6. Application to psychiatrist for involuntary assessment

- (1) Where a physician has examined a person and concludes that the person
- (a) is suffering from mental disorder of a nature or degree so as to require hospitalization in the interests of the person's own safety or the safety of others; and
  - (b) is refusing or is unable to consent to undergo psychiatric assessment,
- the physician may make application to a psychiatrist for an involuntary psychiatric assessment of the person.

#### Content of application

- (2) An application under subsection (1) shall be in the form prescribed by the regulations and the physician who signs the application shall set out in the application,
- (a) that the physician personally examined the person who is the subject of the application;
  - (b) the date on which the physician examined the person;
  - (c) that the physician 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
  - (d) the reasons for the application, including the facts upon which the physician bases his or her opinion as to the nature and degree of severity of the person's mental disorder and its likely consequences, distinguishing between facts observed by the physician and matters communicated to the physician by another person.

#### Authority under application

- (3) An application under subsection (1) is sufficient authority
- (a) for any peace officer or other person to take the person into custody as soon as possible, but not later than seven days from and including the day on which the examination was completed, and to take the person to any psychiatric facility;
  - (b) to admit to and to detain, restrain and observe the person in a psychiatric facility for not more than seventy-two hours; and
  - (c) for a psychiatrist to conduct a psychiatric assessment of the person. *1994, c.39, s.6.*

### 7. Application to court for order for examination

- (1) Any person may make an application to a judge requesting an order for the involuntary psychiatric examination by a physician of another person allegedly suffering from a mental disorder and setting out the reasons for the request.

#### Consideration of application

- (2) A judge who receives an application under subsection (1) shall examine the application and, where the judge considers the application justifies it, hear and consider the allegations of the person who made the application and the evidence of any witnesses, without notice to the person who is the subject of the application if the judge believes that is warranted.

#### Criteria

- (3) After a hearing under subsection (2), the judge may issue an order for the involuntary psychiatric examination of the person who is the subject of the application if the judge has reasonable cause to believe that the person





- (a) is suffering from a mental disorder of a nature or degree so as to require hospitalization in the interests of the person's own safety or the safety of others; and
- (b) is refusing or is unable to consent to undergo psychiatric examination.

**Denial of application**

- (4) Where the judge considers that the criteria set out in subsection (3) have not been established, the judge shall so indicate in writing on the application received under subsection (1) and the applicant shall be informed that no order will be issued in respect of that application.

**Form of order**

- (5) An order under subsection (3) for the involuntary psychiatric examination of a person shall direct one or more of
  - (a) a peace officer;
  - (b) an individual named in the order;
  - (c) any member of a class named in the order,

to take the person named or described in the order into custody and take the person forthwith to a place where the person shall be given a psychiatric examination.

**Duration of order**

- (6) An order under subsection (3) is valid for a period of seven days from and including the day on which it is made. *1994, c.39, s.7.*

**8. Peace officer, powers**

- (1) A peace officer may take a person into custody and take him or her forthwith to a place for involuntary psychiatric examination if the peace officer has reasonable grounds to believe that
  - (a) the person is suffering from mental disorder of a nature or degree so as to require hospitalization in the interests of the person's own safety or the safety of others;
  - (b) the person is refusing or unable to consent to undergo psychiatric examination; and
  - (c) the urgency of the situation does not allow for a judicial order for psychiatric examination.

**Reasonable measures**

- (2) A peace officer or other person who is proceeding under subsection (1) or subsection 6(3) or 7(5) may take any reasonable measures including the entering of any premises and the use of physical restraint or force to take the person into custody. *1994, c.39, s.8.*

**9. Time of examination**

Where a person is taken into custody for involuntary psychiatric examination under this Act, the physician shall conduct the examination within twenty-four hours after the person is taken into custody. *1994, c.39, s.9.*

**10. Duty to inform**

A peace officer or other person who takes a person into custody for the purpose of taking the person for an involuntary psychiatric examination or for an involuntary psychiatric assessment under this Act shall promptly inform the person,

- (a) where the person is being taken;

- (b) that the person is being taken for psychiatric examination or for psychiatric assessment and the reasons therefor; and
- (c) that the person has the right to retain and instruct counsel without delay. *1994, c.39, s.10.*

**11. Information at place of examination**

Upon arrival at the place of psychiatric examination or psychiatric assessment or, if the person is apparently not able to understand, as soon thereafter as the person appears to be able to understand the information, the administrator shall ensure that the person is informed

- (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. *1994, c.39, s.11.*

**12. Peace officer to retain custody**

- (1) A peace officer or other person who takes a person into custody for the purpose of taking the person for psychiatric examination or of taking the person for a psychiatric assessment shall ensure that custody of the person is assumed by a responsible person at the place of examination or assessment.

**Duty to return person**

- (2) Where a person is taken to a psychiatric facility or other health facility for psychiatric examination or for psychiatric assessment and it is decided not to apply for psychiatric assessment of the person or it is decided not to admit the person as a patient of the facility, the person who brought the person to the facility or such other person who has assumed custody shall, unless the detained person otherwise requests, arrange for the return of the person to the place where the person was when taken into custody or to another appropriate place. *1994, c.39, s.12.*

## INVOLUNTARY PATIENT

**13. Involuntary admission**

- (1) A psychiatrist who has received an application for an involuntary psychiatric assessment of a person under subsection 6(1) and who has assessed the person may confirm the admission of the person as an involuntary patient of the psychiatric facility by completing and filing with the administrator a certificate of involuntary admission in the form prescribed by the regulations if the psychiatrist is of the opinion that the person
  - (a) is suffering from a mental disorder of a nature or degree so as to require hospitalization in the interests of the person's own safety or the safety of others; and
  - (b) is refusing or is unable to consent to voluntary admission.

**Voluntary admission**

- (2) A psychiatrist who has assessed the person's mental condition may confirm the admission of him or her as a voluntary patient of the psychiatric facility if the psychiatrist is of the opinion that the person is
  - (a) suffering from mental disorder;
  - (b) in need of the psychiatric treatment provided in a psychiatric facility; and



- (c) suitable for admission as a voluntary patient,  
and the person consents to be admitted as a voluntary patient.

**Release if criteria for admission not satisfied**

- (3) A psychiatrist who 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.

**Release after detention period if not admitted**

- (4) If, after seventy-two hours detention, a person has not been
  - (a) confirmed as 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 psychiatrist under subsection (3),the administrator shall ensure that the person is promptly informed that the person has the right to leave the place of assessment, subject to any detention that is lawfully authorized otherwise than under this Act.

**Contents of certificate**

- (5) The psychiatrist who signs a certificate of involuntary admission, or any certificate of renewal thereof, shall set out in the certificate,
  - (a) that the psychiatrist personally assessed the person who is the subject of the certificate;
  - (b) the date on which the psychiatrist assessed the person;
  - (c) the psychiatrist's opinion as to the nature and degree of severity of the person's mental disorder;
  - (d) the psychiatrist's diagnosis or provisional diagnosis of the person's mental disorder; and
  - (e) the reasons for the involuntary admission including the facts upon which the psychiatrist bases his or her opinion as to the nature and degree of severity of the mental disorder and its likely consequences, distinguishing between facts observed by the psychiatrist and matters communicated to the psychiatrist by another person.

**Review where certificate issued by psychiatrist who made initial examination**

- (6) Where the physician who made the examination under subsection 6(1) is a psychiatrist, the psychiatric assessment of the person may be conducted by that psychiatrist but where a certificate of involuntary admission is issued, the patient or his or her representative may require that a reassessment be conducted by another psychiatrist within seventy-two hours of the issue of the certificate. *1994, c.39, s.13.*

**14. Change from voluntary to involuntary patient**

- (1) After examining a voluntary patient and assessing the patient's mental condition, the attending psychiatrist may, if satisfied that the patient meets the criteria set out in clause 13(1), change the status of a patient to that of involuntary patient by completing a certificate of change of status in the prescribed form.

**Review of change of status by second psychiatrist**

- (2) Where a certificate of change of status is issued, the patient or his or her representative may require that a reassessment be conducted by another psychiatrist within seventy-two hours of the issue of the certificate. *1994, c.39, s.14.*

**15. Duration of detention under certificate**

A certificate of involuntary admission completed under subsection 13(1) or a certificate of change of status completed under subsection 14(1) is sufficient authority to confirm the admission of and detain, restrain, observe, examine and treat a patient in a psychiatric facility for not more than twenty-eight days from the date of the certificate. *1994, c.39, s.15.*

**16. Certificate of renewal**

- (1) Shortly before the expiry of a certificate of involuntary admission or of change of status under subsection 14(1), or any certificate of renewal thereof, the attending psychiatrist shall assess the patient's mental condition and may renew the patient's status as an involuntary patient by completing and filing with the administrator a certificate of renewal, if the prerequisites for admission as an involuntary patient set out in subsection 13(1) are met.

**Release if certificate not renewed**

- (2) If the attending psychiatrist does not renew the patient's status as an involuntary patient, the psychiatrist 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.

**Duration of renewal certificate**

- (3) An involuntary patient may be detained, restrained, observed, examined and treated, and cared for in a psychiatric facility
- (a) for not more than thirty days under a first certificate of renewal; and
  - (b) for not more than ninety days under a second or third certificate of renewal; and
  - (c) for not more than twelve months under a subsequent certificate of renewal.

**Review**

- (4) On the filing of a third certificate of renewal and at least once annually thereafter, the patient shall be deemed to have applied to the Review Board for review of the status of the patient to determine whether the prerequisites for admission as an involuntary patient set out in subsection 13(1) were met when the certificate was filed and continue to be met at the time of the hearing of the application. *1994, c.39, s.16.*

**17. Information on status of patient**

- (1) A psychiatrist who signs a certificate of involuntary admission or who completes and files a certificate of renewal or certificate of change of status to that of an involuntary patient shall promptly inform the patient
- (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 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 may have a reassessment conducted by a second psychiatrist as provided for in subsection 13(6) or 14(2); and



- (c) that the patient has the right to retain and instruct counsel.

**Notice to family**

- (2) Where a certificate of involuntary admission is signed and filed under subsection 13(1), or there is a renewal of the person's status as an involuntary patient, or there is a change in a person's status to an involuntary patient, the administrator shall, wherever it is practicable to do so, provide written notification of the confirmation of admission, renewal or change of status and of the rights to legal counsel and to apply to the Review Board, to the most immediately available adult member of the patient's family or other person who has a close relationship with the patient, or where that is not possible, such public official as may be empowered with the duty of public guardianship or as may otherwise be designated by the Minister. 1994, c.39, s.17.

**18. Change from involuntary to voluntary patient**

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

**Idem**

- (2) If at any time the attending psychiatrist is of the opinion
- (a) that the prerequisites for admission as an involuntary patient set out in subsection 13(1) are no longer met; and
- (b) that the prerequisites for admission as a voluntary patient set out in subsection 13(2) are met,

the attending psychiatrist shall change the status of an involuntary patient to that of a voluntary patient by completing and filing with the administrator a certificate of change of status.

**Duty to inform patient**

- (3) Where a patient's status changes to that of a voluntary patient, the administrator 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. 1994, c.39, s.18.

**CRIMINAL CODE AND OTHER TRANSFERS**

**19. Dispositions under *Criminal Code*, detained person deemed involuntary patient**

- (1) Where a person
- (a) is found not criminally responsible on account of mental disorder or unfit to stand trial pursuant to Part XX.I of the *Criminal Code* (Canada) R.S.C. 1985, Chap. C-46; and
- (b) is detained in a psychiatric facility by a disposition under the *Criminal Code*,

the person shall be deemed to be an involuntary patient for the purposes of treatment under this Act but there shall be no review under this Act with respect to that disposition.

**Person detained under *Criminal Code***

- (2) Where a person has been detained under the *Criminal Code* 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* is about to expire, a psychiatrist, 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 subsection 13(1) are met, admit the person as an involuntary patient of the psychiatric facility by completing and filing with the administrator a certificate of involuntary admission that meets the requirements of subsection 13(5).

**Transfer of prisoner to psychiatric facility**

- (3) Where in the opinion of a physician, a person confined in a correctional centre and charged with or convicted of an offence is suffering from mental disorder, the Minister may cause the person to be removed to a psychiatric facility for examination, care, and treatment; and that person shall not be discharged from the psychiatric facility or returned to the correctional centre unless it is determined to the satisfaction of the Minister he or she is fit to be discharged or returned to the correctional centre.

**Discharge of prisoners**

- (4) Except for the purpose of returning the patient to his or her place of imprisonment, nothing in this section authorizes the discharge of a patient who is imprisoned for an offence and whose sentence has not expired. *1994, c.39, s.19; 2013, c.18, s.4.*

**20. Transfer of involuntary patient to another facility**

- (1) When an involuntary patient requires treatment that cannot as appropriately be provided in the psychiatric facility, the administrator, on the advice of the attending psychiatrist, may, if otherwise permitted by law, transfer the patient to a hospital, addiction treatment facility or other care facility for treatment, as may be appropriate, and return him or her to the psychiatric facility on the conclusion of the treatment.

**Powers of administrator**

- (2) When an involuntary patient is transferred under subsection (1), the administrator of the hospital, addiction treatment facility or other care facility to which the patient is transferred has, in addition to the powers and duties conferred by any other Act, the powers and duties under this Act in respect of the custody and control of the patient. *1994, c.39, s.20.*

**21. Inter-facility transfer**

- (1) The administrator of a psychiatric facility or addiction treatment facility may, upon the advice of the attending psychiatrist or medical addiction consultant, if otherwise permitted by law and subject to arrangements being made with the administrator of another psychiatric or addiction treatment facility, transfer any patient to that other facility upon completing a memorandum of transfer in the prescribed form.

**Authority to detain continued**

- (2) Where a patient is transferred under subsection (1), the authority to detain the patient continues in force in the psychiatric facility or addiction treatment facility to which the patient is so transferred. *1994, c.39, s.21.*

**22. Transfer to another jurisdiction**

- (1) Where it appears to the Minister
- (a) that an involuntary patient in a psychiatric facility has come or been brought into Prince Edward Island 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's hospitalization in the other jurisdiction has been arranged, the Minister may in writing authorize the patient's transfer to the other jurisdiction.

**Transfer from another jurisdiction**

- (2) Where it appears to the Minister
  - (a) that there is in another jurisdiction an involuntary patient in a psychiatric facility and Prince Edward Island is responsible for that patient's hospitalization; or
  - (b) that it would be in the best interest of an involuntary patient in a psychiatric facility in another jurisdiction to be hospitalized in Prince Edward Island,

the Minister may in writing authorize the transfer of the patient into Prince Edward Island for admission into a psychiatric facility as an involuntary patient, and such writing is authority to admit the patient as if a certificate had been issued under section 13. *1994, c.39, s.22; 2013, c.18, s.5.*

**TREATMENT**

**23. Consent to treatment**

- (1) Subject to subsections (2), (6), (8), (9), (11) and (12) and section 24, a patient of a psychiatric facility has the right to give or refuse consent to psychiatric or other medical treatment.

**Consent of patient under sixteen**

- (2) Consent to psychiatric treatment may be given in the case of a patient who is under sixteen,
  - (a) where a court order appointing a guardian of the person of the patient is not in effect, by the patient's parent;
  - (b) where a court order has appointed a guardian of the person of the patient, by that guardian.

**Capacity to consent**

- (3) As soon as reasonably possible after admission of a patient, the attending psychiatrist shall determine whether a patient is capable, and in so doing the attending psychiatrist shall consider
  - (a) whether the patient understands
    - (i) the condition for which the treatment or course of treatment is proposed,
    - (ii) the nature and purpose of the treatment or course of treatment,
    - (iii) the risks and benefits involved in undergoing the treatment or course of treatment, and
    - (iv) the risks and benefits involved in not undergoing the treatment or course of treatment; and
  - (b) whether the patient's ability to consent is affected by his or her condition.

**Certificate of incapacity**

- (4) A psychiatrist who is of the opinion that a patient is incapable shall complete and file with the administrator a certificate of incapacity with reasons for the opinion.

**Request for review**

- (5) Upon receipt of a certificate under subsection (4), the administrator shall provide to the patient and to the most immediately available adult member of the patient's family or other person who has a close relationship with the patient
- (a) a copy of the certificate; and
  - (b) written notification of the right to have the psychiatrist's opinion reviewed by the Review Board by filing with the Review Board an application for a review.

**Substituted consent**

- (6) Where a patient is incapable and requires psychiatric or medical treatment, a substitute decision-maker, such as a guardian or a person who, in the opinion of the attending psychiatrist, is the most appropriate member of the patient's family or other person who has a close relationship with the patient, may give or refuse consent.

***Idem***

- (7) Where no appropriate substitute decision-maker is available or the substitute decision-maker requests it, the administrator shall send a copy of the certificate of incapacity to such public official as may be empowered with the duty of public guardianship or as may otherwise be designated by the Minister.

***Idem***

- (8) Upon receipt of a certificate under subsection (7), or upon being notified by the psychiatrist who completed the certificate that it is being sent by the administrator, the said public official may give or refuse consent to psychiatric or other medical treatment on behalf of the patient until
- (a) the Review Board or a judge determines that the patient is capable or authorizes treatment without consent; or
  - (b) the certificate is cancelled.

**Consent to be based on balance of benefits and risks**

- (9) A substitute decision-maker or the said public official shall only consent to the treatment of an incapable patient when the substitute decision-maker or the said public official believes
- (a) that it is medically necessary; and
  - (b) that its potential benefit outweighs its risks or disadvantages.

**Cancellation of certificate**

- (10) Where a certificate has been filed under subsection (4), the attending psychiatrist of the patient shall, at least monthly, review the patient's condition and where satisfied it is appropriate, the psychiatrist shall cancel the certificate and notify the administrator, the patient and his or her substitute decision-maker or the said public official of the cancellation.

**Emergency medical treatment**

- (11) Medical treatment may be given without consent to any patient of a psychiatric facility who, in the opinion of a psychiatrist, is incapable or is under sixteen years of age if there is imminent and serious danger to the life, a limb or a vital organ of the patient requiring immediate medical treatment.

**Interim psychiatric treatment**

- (12) Psychiatric treatment may be given without consent to any patient of a psychiatric facility, in order to keep the patient under control and to prevent harm to the patient or to another person, by the use of such restraint or medication as is reasonable having regard to the physical and





mental condition of the patient, pending consent on behalf of the patient or an order of the Review Board.

#### **Records**

- (13) Measures necessary for the exercise of the authority given in this Act to treat and restrain a patient that are taken without the patient's consent shall be recorded in detail in the clinical record of the patient's care and treatment in the psychiatric facility and the record shall indicate the reason for the employment of such measures. *1994, c.39, s.23.*

#### **24. Application to Review Board where consent refused**

- (1) The attending psychiatrist of a patient may apply to the Review Board for an order authorizing the giving of specified psychiatric treatment and other related medical treatment to an involuntary patient where consent has been refused.

##### **Material on application**

- (2) The Review Board shall not consider an application under subsection (1) unless it is accompanied by statements signed by the attending psychiatrist and another psychiatrist, 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 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).

##### **Basis for decision**

- (3) The Review Board by order may authorize the giving of the specified psychiatric treatment and other related medical treatment if it is satisfied that the criteria set out in clauses (2)(a) to (d) have been established.

##### **Terms and conditions**

- (4) An order may include terms and conditions and may specify the period of time during which the order is effective. *1994, c.39, s.24.*

## **CERTIFICATE OF LEAVE**

#### **25. Leave to live outside facility**

- (1) Subject to any detention that is legally authorized otherwise than under this Act, the attending psychiatrist 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 and file with the administrator a certificate of leave allowing the patient to live outside the psychiatric facility subject to the specific written condition that the patient shall report at specified times and places for treatment and subject to such conditions as may be specified in the certificate.

**Consent**

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

**Cancellation**

- (3) The attending psychiatrist, by a certificate of cancellation of leave, may without notice cancel the certificate of leave if the attending psychiatrist is of the opinion that
- (a) the patient's condition may present a danger to the patient or others; or
  - (b) the patient has failed to report as required by the certificate of leave.

**Return of patient to facility**

- (4) A certificate of cancellation of leave is sufficient authority for thirty days after it is signed for a peace officer to take the patient named in it into custody and to take the patient forthwith to the psychiatric facility where the psychiatrist who completed the certificate of cancellation of leave attends. *1994, c.39, s.25.*

**26. Absence, involuntary patient**

Where an involuntary patient is absent from a psychiatric facility without the permission of the attending psychiatrist, the administrator may issue an order to have the patient taken into custody and returned to the psychiatric facility by any peace officer and the order is sufficient authority for thirty days for a peace officer to do so. *1994, c.39, s.26.*

**REVIEW BOARD**

**27. Review Board**

- (1) The Lieutenant Governor in Council shall establish a Review Board with jurisdiction in all psychiatric facilities and addiction treatment facilities in the province.

**Appointment**

- (2) The Lieutenant Governor in Council shall appoint the members of the Review Board.

**Members**

- (3) The Review Board shall be composed of three members of whom
- (a) one shall be a member in good standing of the Law Society of Prince Edward Island who shall be chairperson and preside at meetings of the Board;
  - (b) one shall be a psychiatrist; and
  - (c) one shall be neither a lawyer nor a physician.

**Alternate members**

- (4) The Lieutenant Governor in Council shall appoint alternate members to the Review Board, and, where for any reason a member is unable or refuses to act, the alternate member appropriate to comply with subsection (3) shall act in his or her stead.

**Term of office**

- (5) A member shall hold office for the period, not to exceed three years, specified in the instrument of appointment, but is eligible for *re*-appointment at the expiration of his or her term of office.



**Quorum**

- (6) Three members of the Review Board constitute a quorum, and the decision of a majority is the decision of the Review Board.

**Conflict of interest**

- (7) A member or alternate member shall not hear any case in which the member has a personal interest. *1994, c.39, s.27.*

**28. Review**

- (1) An involuntary patient, or any person on the patient's behalf, may apply in the prescribed form to the chairperson of the Review Board requesting the Board to review
- (a) that the criteria for admission of the patient as an involuntary patient were satisfied;
  - (b) the status of the patient;
  - (c) the patient's certificate of renewal;
  - (d) the patient's certificate of leave;
  - (e) an opinion that the patient is or is not capable and the choice of substitute decision-maker who may consent on behalf of the patient;
  - (f) an opinion that the patient is or is not capable of managing his or her affairs;
  - (g) the decision to transfer the patient to another facility or jurisdiction;
  - (h) any unreasonable denial of the patient's communication rights under subsection 33(2).

**Authorization of treatment or withholding of clinical record**

- (2) A psychiatrist or the administrator may apply in the prescribed form to the chairperson of the Review Board requesting that the Board authorize
- (a) specified psychiatric treatment and other related medical treatment without consent;
  - (b) the withholding of all or part of the clinical record of a patient who applies for access to it

and the Review Board may grant such authority. *1994, c.39, s.28.*

**29. Hearing**

- (1) On receiving an application under section 28, the Review Board shall within ten days of its receipt hold a hearing and make a decision on the application.

**Notice**

- (2) The Review Board shall give three days notice of the hearing of the application to every party and 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 application.

**Parties**

- (3) In every application to the Review Board, the applicant, the patient and the administrator are parties.

**Public guardian**

- (4) In an application for authority to give treatment in a case where a substitute decision-maker or the public official empowered with the duty of public guardianship has refused consent on the patient's behalf, the substitute decision-maker or the said public official is also a party.

**Added parties**

- (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. *1994, c.39, s.29.*

**30. Hearing**

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

**Informal hearing**

- (2) A hearing before the Review Board may be conducted in as informal a manner as is appropriate in the circumstances.

**Counsel**

- (3) Every party may be represented by counsel or agent at a hearing before the Review Board.

**Examination of recorded evidence**

- (4) Every party shall be given an opportunity to examine and to copy, before the hearing, any document that is intended to be produced or any report which is to be given in evidence.

**Evidence**

- (5) Every party may present such evidence as the Review Board considers relevant and may question witnesses.

**Duty of Review Board**

- (6) 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, and the Review Board has the powers of a commissioner under the *Public Inquiries Act R.S.P.E.I. 1988, Cap. P-31.*

**Record**

- (7) All proceedings 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 Supreme Court.

**Hearings in camera**

- (8) All Review Board hearings shall be closed to the public but the Minister may, in any particular case where in the view of the Minister the public interest so requires, direct that a hearing be open to the public.

**Decision**

- (9) After making a decision on the issue which has been investigated and heard, the Review Board shall forthwith notify the parties of the Board's decision and shall issue an order as to what action any party must take and the date by which the action must be taken.

**Compliance with order**

- (10) Any person who is required to comply with a Review Board order shall comply by the dates indicated on the Board order.

**Reasons**

- (11) At the request of any party the Review Board shall provide written reasons for its decision.



**Judicial review**

- (12) A decision or order of the Review Board may be the subject of an application for judicial review pursuant to the *Judicial Review Act* R.S.P.E.I. 1988, Cap. J-3.

**Limitation on applications for review**

- (13) Where the Review Board has made a decision on any matter pursuant to this section, it shall not entertain another application in respect of the same matter until the expiration, since the date of the decision of the Board, of
- (a) twenty-eight days, in the case of an initial application;
  - (b) six months, in the case of any subsequent application. *1994, c.39, s.30.*

**CLINICAL RECORDS****31. Disclosure prohibited**

- (1) Except as may be otherwise provided in this Act, no person shall disclose, transmit or examine a clinical record.

**Exceptions**

- (2) The administrator of a psychiatric facility in which a clinical record is prepared and maintained may disclose or transmit the record to, or permit the examination thereof by
- (a) any person with the authorization of the patient, where the patient has attained the age of majority and is competent to give such authorization;
  - (b) any person, where the patient has not attained the age of majority, with the authorization of the patient's parent or guardian;
  - (c) any person, where the patient is not competent to give authorization, with the authorization of the guardian of the patient;
  - (d) any person employed in or on the staff of the psychiatric facility, for the purpose of assessing or treating the patient;
  - (e) the medical officer in charge of a health facility or psychiatric facility currently involved in the direct care of the patient, upon the written request of the medical officer;
  - (f) a physician or community mental health worker engaged in the direct care of the patient, where the delay in obtaining the authorization mentioned in clause (a) or (b) is likely to endanger the mental or physical health of the patient;
  - (g) a person authorized to conduct an investigation or assessment under the *Adult Protection Act* R.S.P.E.I. 1988, Cap. A-5;
  - (h) any person for the purpose of research, academic pursuit or the compilation of statistical data where the person agrees in writing not to disclose the name or other means of identification of the patient and not to use or communicate the information for any other purpose;
  - (i) the Review Board for the purposes of a hearing; or
  - (j) a review board established under the *Criminal Code*.

**Patient access to clinical record**

- (3) Subject to subsection (4), a person who has attained eighteen years of age and is capable is entitled on application to the administrator to examine and to copy the clinical record or a copy of the clinical record of his or her own examination, assessment, care and treatment in a psychiatric facility.

**Application to Review Board**

- (4) The administrator or a psychiatrist, within seven days after a person applies to examine his or her clinical record, may apply to the Review Board to withhold all or part of the clinical record and in the application shall set out the reasons for withholding the record.

**Order by Review Board**

- (5) Upon an application under subsection (4), the Review Board shall review the clinical record and by order shall direct the administrator 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 or is likely to result in serious physical harm or serious emotional harm to another person.

**Idem**

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

**Submissions**

- (7) The person and the administrator or psychiatrist are each entitled to make submissions to the Review Board in the absence of the other before the Review Board makes its decision.

**Right of correction**

- (8) Where a person is allowed to examine his or her clinical record, the person may
- (a) request correction of the information in the clinical record, if the person believes there is an error or omission in the clinical record;
  - (b) require that a statement of disagreement be attached to the clinical record reflecting any correction that is requested but not made; and
  - (c) require that notice of the correction or statement of disagreement be given to any person or organization to whom the clinical record was disclosed within the year before the correction was requested or the statement of disagreement was required.

**Disclosure pursuant to order of judge**

- (9) Subject to subsections (10) and (11), the administrator of a psychiatric facility shall disclose, transmit or permit the examination of the clinical record of a patient pursuant to a subpoena, order or direction of a judge or provincial court judge with respect to a matter in issue before the judge.

**Statement by attending psychiatrist**

- (10) Where the attending psychiatrist of the patient states in writing that he or she is of the opinion that the disclosure, transmittal or examination of the clinical record or of a specified part of the clinical record pursuant to subsection (9)
- (a) is likely to result in serious harm to the treatment or recovery of the patient; or
  - (b) is likely to result in serious physical harm or serious emotional harm to another person,

the administrator shall not disclose the clinical record or part thereof specified by the attending psychiatrist except under an order of the judge or provincial court judge before whom the matter is in issue, made after a hearing that is held on notice to the attending psychiatrist.



**Matters to be considered by judge**

- (11) On a hearing referred to in subsection (10), the judge or provincial court judge shall consider whether or not the disclosure, transmittal or examination of the clinical record or the part of the clinical record specified by the attending psychiatrist
- (a) is likely to result in serious harm to the treatment or recovery of the patient; or
  - (b) is likely to result in serious physical harm or serious emotional harm to another person,

and for that purpose the judge or provincial court judge may examine the clinical record, and, if he or she believes that such a result is likely, the judge or provincial court judge shall not order the disclosure, transmittal or examination unless satisfied that to do so is essential in the interests of justice.

**Return of clinical record**

- (12) Where a clinical record is required pursuant to subsection (9), (10) or (11), the registrar of the court in which the clinical record is admitted in evidence, or if not so admitted, the person to whom the clinical record is transmitted shall return the clinical record to the administrator forthwith after the determination of the matter in issue in respect of which the clinical record was required.

**Disclosure**

- (13) Except as provided in subsection (9), (10), and (11), no person shall disclose in an action or proceeding in any court or before anybody other than the Review Board any knowledge or information in respect of a patient obtained in the course of assessing or treating or assisting in assessing or treating the patient in a psychiatric facility or in the course of employment in the psychiatric facility, except with the consent of the patient or consent on behalf of the patient under clause (2)(b) or (c), or to a person otherwise cited in subsection (2) or subsection (15).

**Withholding access to record, generally**

- (14) Without prejudice to subsection (4), the administrator may, where he or she considers it appropriate to do so, apply in the prescribed form to the chairperson of the Review Board for authority to withhold access to all or any part of a patient's clinical record, and the Review Board may grant such authority.

**Disclosure between physicians**

- (15) Unless the patient or his or her representative has directed otherwise, an attending psychiatrist may disclose information concerning the care of a patient to
- (a) the physician who referred the patient; or
  - (b) the physician primarily responsible for the on-going care of the patient. *1994, c.39, s.31.*

**PATIENT RIGHTS****32. Responsibility of administrator to inform *re* patient rights**

- (1) The administrator of a psychiatric facility shall, as soon as reasonably possible after the admission of a patient to the facility
- (a) provide to the patient a written outline of the functions of the Review Board and the manner in which a matter can be referred to the Review Board; and
  - (b) advise the patient of the right

- (i) to communicate with members of the patient's family or with his or her guardian or other person having responsibility for managing his or her affairs, and
- (ii) to retain and instruct counsel.

**Language**

- (2) Where the administrator has reason to believe that the patient has difficulty comprehending the language or form in which the information required by subsection (1) is being conveyed, the administrator shall cause the information to be given to the patient in a language or form the patient understands.

**Notice**

- (3) The administrator shall ensure that a notice of the rights set out in subsection (1) is prominently displayed in all wards and in public reception areas of the psychiatric facility.

**Further opportunity to impart information**

- (4) Where at the time the administrator sought to provide the information required by subsection (1) the patient did not appear able to comprehend the information, the administrator shall cause that information to be given to the patient at the earlier of
  - (a) the patient appearing able to comprehend the information; or
  - (b) the patient making inquiry.

**Explanation of change of status**

- (5) Whenever a patient's status is being changed, the administrator shall ensure that the patient receives a full explanation of the implications of the change and of all possible procedures for the patient to appeal the change. *1994, c.39, s.32.*

**33. Rights not affected by receipt of mental health services**

- (1) Except as provided in this Act, no person shall be deprived of any right or privilege enjoyed by other persons by reason of
  - (a) having received mental health services; or
  - (b) being named in an application, certificate, or order issued under this Act or in any similar application, certificate, or order issued under any former Act respecting mental health.

**Communication rights**

- (2) No person who is in a psychiatric facility or addiction treatment facility as a patient under this Act shall be denied
  - (a) reasonable access to a telephone to make or receive calls;
  - (b) reasonable access to any person who is visiting him or her during scheduled visiting hours;
  - (c) access at any time to the following people provided that they are at the facility to see the patient:
    - (i) the patient's representative or agent,
    - (ii) the patient's guardian,
    - (iii) any other person authorized by the Minister; or





- (d) reasonable access to materials and resources necessary to write and send correspondence, and reasonable access to any correspondence which may have been sent to the patient. *1994, c.39, s.33.*

## OFFENCES

### 34. **Secreting or assisting person to escape**

Any person who hides a person suffering from mental disorder who is ordered to be placed or is placed in a psychiatric facility or who knowingly assists such person, whether in a psychiatric facility or allowed out on leave, to escape or to break any condition of his or her leave, is guilty of an offence. *1994, c.39, s.34.*

### 35. **Ill-treatment or neglect**

Any officer, nurse, attendant, servant, or person employed in a psychiatric facility, or any person having charge, care, control or supervision of a person suffering from mental disorder, by reason of any contract or tie of relationship of marriage or otherwise, who ill-treats or wilfully neglects that person is guilty of an offence. *1994, c.39, s.35.*

### 36. **False entries in records**

Any person, who in any register, book, certificate, statement, report or return, knowingly makes a false entry as to any matter as to which he or she is by this Act required to make an entry, is guilty of an offence. *1994, c.39, s.36.*

### 37. **False information**

Any person who, for the purpose of obtaining any certificate under this Act or the renewal of any certificate wilfully supplies the Minister, a psychiatrist, or the administrator of a psychiatric facility or any person having the custody, care, control, or supervision of a person suffering from mental disorder, with any untrue or incorrect information, plan, description, or notice is guilty of an offence. *1994, c.39, s.37; 2013, c.18, s.6.*

### 38. **Penalty**

A person who violates any provision of this Act is guilty of an offence and is liable, on summary conviction, to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding three months or to both. *1994, c.39, s.38.*

## ADDICTION

### 39. **Application to addiction**

For the purposes of mental disorder owing to alcohol or drug addiction or abuse this Part applies with necessary modifications and, in particular, references to the term in column 1 of the table shall be construed as references to the term in column 2 thereof. *1994, c.39, s.39.*

## TABLE

COLUMN 1

COLUMN 2

psychiatrist	medical addiction consultant
psychiatric examination	addiction examination
psychiatric facility	addiction treatment facility
psychiatric assessment	addiction assessment

## **PART III — GUARDIANSHIP APPOINTMENT BY COURT**

### **40. Application for guardianship order**

- (1) Any interested person may apply to a judge for an order appointing a guardian for a person.

#### **Documents to be filed**

- (2) An application under subsection (1) shall be accompanied by two certificates of incapacity in the prescribed form indicating that in the opinion of two physicians the person named in the application is incapable of managing his or her personal affairs.

#### **Notice**

- (3) Notice of an application under subsection (1) shall be given by serving a copy of the application on
- the person in respect of whom the application is made;
  - the nearest relative of that person;
  - the person proposed as guardian;
  - if the person referred to in clause (a) is a resident of a psychiatric facility, licensed nursing home, hospital, licensed community care facility or residential institution, the administrator thereof.

#### **Appointment of guardian**

- (4) Where the judge is satisfied that a person named in an application under subsection (1) is
- in need of guardianship; and
  - unable to make reasonable judgments in respect of matters relating to his or her personal affairs,

and that it is in the best interests of the person that a guardian be appointed, the judge shall make an order appointing a guardian.

#### **Directions**

- (5) An order under subsection (4) may include such directions as the judge considers appropriate and may be limited to certain functions in accordance with the needs of the person or may be limited in duration.

#### **Powers of guardian**

- (6) Subject to directions or other limitations under subsection (5), a guardian may exercise all the rights and powers relating to personal matters that the person could have exercised if competent, including such matters as residence, health care, legal proceedings, education or training, social contacts.



**Appointment of guardian**

- (7) Where in the opinion of the public official referred to in subsection 23(7), a person is suffering from mental disorder and in need of a guardian and no person is willing or able to make an application for or to be appointed as guardian, the said public official may make an application under subsection (1) for an order appointing him or her or any other person as guardian.

**Continuing review of guardian's activities**

- (8) An order appointing a guardian may, on application, be reviewed by a judge and the judge shall exercise continuing powers of review of the activities of the guardian, and if the guardian dies, resigns or fails to comply with directions, the judge may discharge the guardian and appoint another person in the place of the guardian originally appointed.

**Alternate**

- (9) The judge may appoint an alternate guardian to serve in the absence or incapacity of the guardian. *1994, c.39, s.40.*

**PART IV — GENERAL****41. Official responsibility**

No personal responsibility for the detention or custody of a person in a psychiatric facility rests on the officers or staff or employees of the psychiatric facility, if the person has been detained or is held in custody in accordance with this Act. *1994, c.39, s.41.*

**42. Immunity**

No action lies, or shall be instituted, against any person, whether in the person's public or private capacity, where that person is acting under the authority of this Act, for any loss or damage suffered by any other person by reason of anything done or omitted to be done by the person in good faith and with reasonable care, in the exercise of powers given to him or her by this Act. *1994, c.39, s.42.*

**43. Regulations**

For the purpose of carrying out the provisions of this Act the Lieutenant Governor in Council may make regulations

- (a) designating psychiatric facilities;
- (b) prescribing standards to govern psychiatric facilities;
- (c) prescribing rules for the management and control of psychiatric facilities and for the conduct of the officers and employees thereof and of persons confined therein;
- (d) prescribing forms and records to be used under this Act;
- (e) prescribing duties, functions and powers of mental health advisory and other committees;
- (f) governing and regulating hearings and other proceedings of the Review Board;
- (g) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. *1994, c.39, s.43.*

**44. Repeal**

Repeals. *1994, c.39, s.44.*

