

LEGISLATIVE ASSEMBLY OF THE
NORTHWEST TERRITORIES
10TH ASSEMBLY, 4TH SESSION

TABLED DOCUMENT NO. 57-85(1)

TABLED ON MARCH 21, 1985

COUNCIL OF THE NORTHWEST TERRITORIES

AN ACT RESPECTING
MENTAL HEALTH

Statement of Purpose

The purpose of this Bill is to provide a legal framework for the voluntary and involuntary committal of mentally disordered persons; to establish the voluntary and involuntary committal procedure; to state the civil rights of a mentally disordered person; and to repeal the present Mental Health Act.

AN ACT RESPECTING
MENTAL HEALTH

The Commissioner of the Northwest Territories,
by and with the advice and consent of the Council
of the said Territories, enacts as follows:

Short Title

1. This Act may be cited as the Mental Health Act. 5

Interpretation

2. In this Act

"appeal"	"appeal" means an appeal pursuant to section 29 of this Act;	10
"Commissioner"	"Commissioner" includes a person appointed by him pursuant to section 5 or 6;	
"Executive"	"Executive Member" includes a person appointed by him pursuant to section 5 or 6;	
"hospital"	"hospital" means a medical facility or other place designated by order of the Executive Member, whether located within or outside the Territories, for the observation, examination, care or treatment of a mentally disordered person;	15
"lay dispenser"	"lay dispenser" means a person who is authorized by a Medical Health Officer, appointed pursuant to the <u>Public Health Act</u> , to administer emergency first aid in a community which is without a resident nurse;	20
"medical practitioner"	"medical practitioner" means a person who is entitled to practise medicine in the Territories pursuant to the <u>Medical Profession Act</u> ;	25

EXPLANATORY NOTES

New Ordinance

"mental disorder"	"mental disorder" means a substantial disorder of thought, mood, perception, orientation or memory, any of which grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life but does not include mental retardation or learning disabilities;	5
"mentally competent"	"mentally competent" means having the ability to understand the subject matter in respect of which consent is requested and the ability to appreciate the consequences of giving or withholding consent;	10
"nearest relative"	<p>"nearest relative" means</p> <p>(i) a spouse who is mentally competent and of any age, including anyone who, although not legally married to a person, lives or cohabits with that person as a spouse of that person and is known as such in the community in which they live; or</p> <p>(ii) if there is no spouse or if the spouse is not available, any child who has attained the age of majority and is mentally competent; or</p> <p>(iii) if there are none of the above or if none are available, a parent who is mentally competent or a guardian; or</p> <p>(iv) if there are none of the above or if none are available, any brother or sister who has attained the age of majority and is mentally competent; or</p> <p>(v) if there are none of the above or if none are available, any other of the next of kin who has attained the age of majority and is mentally competent;</p>	15 20 25 30
"prescribed"	"prescribed" means prescribed by the Commissioner by regulation;	
"psychologist"	"psychologist" means a person who is entitled to practise psychology in the Territories pursuant to the <u>Psychologists Act</u> ;	35
"Public Trustee"	"Public Trustee" means the Public Trustee as defined in the <u>Public Trustee Act</u> ;	
"restrain"	"restrain" means to keep under control by the minimal use of such force or mechanical or chemical means as is reasonable having regard to the physical and mental condition of the patient;	40
"review"	"review" means a review pursuant to section 26 of this Act.	45

Agreements

- Agreements with a province 3. Subject to section 49 of the Northwest Territories Act (Canada), the Commissioner may, on behalf of the Government of the Northwest Territories, enter into agreements with a provincial government for the admission of a person who is suffering from a mental disorder to a hospital in that province. 5
- Agreements with the Government of Canada or a provincial government 4. The Executive Member may, on behalf of the Government of the Northwest Territories, enter into agreements with the Government of Canada or a provincial government respecting this Act or the regulations and, in particular, but not so as to restrict the generality of the foregoing, 10
- (a) the conveyance of a voluntary or involuntary patient from the Territories to a hospital in a province; 15
 - (b) the acceptance of a voluntary or involuntary patient by a hospital in a province; 15
 - (c) the conveyance of an involuntary patient for a review or appeal hearing from a hospital in a province to the Territories; 20
 - (d) the review by a review board of a province; 20
 - (e) the patient's rights; 25
 - (f) the periodical reports concerning a voluntary or involuntary patient; 25
 - (g) the discharge of a voluntary or involuntary patient; 25
 - (h) the discharge notices; and 30
 - (i) the examination of persons on remand or under an order of the Commissioner pursuant to the Criminal Code (Canada). 30

Appointments

- Joint appointment 5. The Commissioner and the Executive Member may jointly appoint a person for the whole or a part of the Territories to act on their behalf for the purposes of sections 16, 17, and 19. 35
- Appointment by Commissioner or Executive Member 6. Notwithstanding section 5, where the Commissioner or the Executive Member do not agree on a joint appointment 40
- (a) the Commissioner may appoint a person for the whole or part of the Territories to act on his behalf for the purposes of section 19; and 45
 - (b) the Executive Member may appoint a person for the whole or a part of the Territories to act on his behalf for the purposes of sections 16 and 17. 45

Voluntary Patients

Voluntary admission

7. A hospital may admit a person who is suffering from a mental disorder upon the written recommendation of a medical practitioner and with the written consent of the person being admitted where that person has attained the age of majority and is mentally competent to give a valid consent.

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Involuntary Psychiatric Assessment

Order for psychiatric assessment

8.(1) Where a medical practitioner examines a person and has reasonable cause to believe that the person

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(a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself,

(b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him, or

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(c) has shown or is showing a lack of competence to care for himself,

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and the medical practitioner requires more time to gather information before forming an opinion as to whether that person is suffering from a mental disorder of a nature or quality that will likely result in

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(d) serious bodily harm to that person,

(e) serious bodily harm to another person, or

(f) imminent and serious physical impairment of that person,

the medical practitioner may order the detention of that person at a hospital within the Territories for psychiatric assessment by a medical practitioner where the person has not attained the age of majority or is not mentally competent to give a valid consent to undergo a psychiatric assessment or, if he has attained the age of majority and is mentally competent to give such consent, refuses to undergo a psychiatric assessment.

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Authority of the order

(2) An order made pursuant to subsection (1) is sufficient authority to detain the person who is the subject of the order in custody at a hospital within the Territories for a period of forty-eight hours beginning immediately after the examination referred to in subsection (1) is performed.

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Report to
Executive
Member

(3) A medical practitioner who orders the detention of a person pursuant to subsection (1) shall, within twenty-four hours of the examination which led to the issuing of the order pursuant to subsection (1), send a report respecting the order of detention under his signature to the Executive Member.

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Contents
of report

(4) A medical practitioner, in a report made pursuant to subsection (3), shall

(a) state that he personally examined the person who is detained and that he required more time beyond the examination under subsection (1) to observe the person in order to form his opinion as to whether that person is suffering from a mental disorder of a nature or quality that will likely result in serious bodily harm to that person or to another person;

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(b) set out the facts upon which he issued the order, distinguishing the facts observed by him from the facts communicated to him by others; and

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(c) state the date upon which the examination was made.

Application
for an order
of psychiatric
assessment

9.(1) A person may make an application, supported by an affidavit, to a justice or a territorial judge for an order to have the person named in the application undergo a psychiatric assessment by a medical practitioner.

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Contents of
application

(2) The applicant shall state

(a) the name of the person who is the subject of the application;

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(b) whether that person

(i) has threatened or attempted or is threatening or attempting to cause bodily harm to himself,

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(ii) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him, or

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(iii) has shown or is showing a lack of competence to care for himself,

and that he has reasonable and probable cause to believe that the person is apparently suffering from a mental disorder of a nature or quality that will likely result in

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(c) serious bodily harm to that person,

(d) serious bodily harm to another person, or

(e) imminent and serious physical impairment of that person.

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Notice	(3) A justice or a territorial judge, as the case may be, shall give two days' notice of the hearing to the person who is the subject of the application unless the justice or territorial judge, as the case may be, is satisfied that no notice is necessary or that the delay caused by proceeding by notice might entail serious mischief.	5
Hearing	(4) The justice or territorial judge shall conduct a hearing on the application and hear evidence concerning <ul style="list-style-type: none"> (a) the alleged mental disorder, including <ul style="list-style-type: none"> (i) medical or psychological evidence wherever practicable, and (ii) the applicant's testimony; and (b) any other matter that the justice or territorial judge, as the case may be, deems relevant. 	10 15
Order for psychiatric assessment	(5) Where the justice or territorial judge, as the case may be, based upon the information before him is of the opinion that the person who is the subject of the application is apparently suffering from a mental disorder of a nature or quality that will likely result in <ul style="list-style-type: none"> (a) serious bodily harm to that person, (b) serious bodily harm to another person, or (c) imminent and serious physical impairment of that person, the justice or territorial judge, as the case may be, may issue an order in the prescribed form authorizing the psychiatric assessment of the person who is the subject of the application by a medical practitioner.	20 25 30
Order directed to peace officer	(6) A justice or a territorial judge, as the case may be, who issues an order pursuant to subsection (5) may direct that order to all peace officers within the Territories and shall name and describe the person with respect to whom the order has been made.	35
Authority of the order	(7) An order made pursuant to subsection (5) is sufficient authority for any peace officer to whom it is directed, for a period not to exceed seven days from and including the day upon which the order is made, to take the person named and described in custody to a medical practitioner or hospital within the Territories without delay where that person may be detained at a hospital within the Territories for psychiatric assessment by a medical practitioner for a period not to exceed forty-eight hours from the time the person is transferred into the custody of the medical practitioner or hospital.	40 45 50

Order of medical practitioner prohibited	(8) Where a peace officer transfers the custody of a person named and described in an order made pursuant to subsection (5) to a medical practitioner or a hospital, a medical practitioner shall not issue an order referred to in subsection 2(1).	5
Justice may redirect application	(9) Where an application is made pursuant to subsection (1) to a justice for an order, the justice may exercise his jurisdiction pursuant to this Act or redirect that application to a territorial judge without delay.	10
Action by psychologist	<p>10. Where a psychologist has reasonable and probable cause to believe that a person</p> <ul style="list-style-type: none"> (a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself, (b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him, or (c) has shown or is showing a lack of competence to care for himself, <p>and, if based upon the information before him, the psychologist is of the opinion that the person is apparently suffering from a mental disorder of a nature or quality that will likely result in</p> <ul style="list-style-type: none"> (d) serious bodily harm to that person, (e) serious bodily harm to another person, or (f) imminent and serious physical impairment of that person, <p>and the circumstances are such that to proceed under section 9 would be unreasonable or would result in a delay that would likely result in serious bodily harm to that person or to another person or in imminent and serious physical impairment of that person, the psychologist may take that person in custody without delay to a medical practitioner or a hospital within the Territories for psychiatric assessment by a medical practitioner.</p>	15
Action by peace officer	<p>11. Where a peace officer has reasonable and probable cause to believe that a person</p> <ul style="list-style-type: none"> (a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself, (b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him, or (c) has shown or is showing a lack of competence to care for himself, 	40
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and, if based upon the information before him, the peace officer is of the opinion that the person is apparently suffering from a mental disorder of a nature or quality that will likely result in

- (d) serious bodily harm to that person,
- (e) serious bodily harm to another person, or
- (f) imminent and serious physical impairment of that person,

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and the circumstances are such that to proceed under section 9 would be unreasonable or would result in a delay that would likely result in serious bodily harm to that person or to another person or in imminent and serious physical impairment of that person, the peace officer may take that person in custody without delay to a medical practitioner or a hospital within the Territories for psychiatric assessment by a medical practitioner.

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Action by
private
person

12.(1) Where a peace officer is not available and it would be unreasonable to wait for a peace officer to act pursuant to section 11, a person who has reasonable and probable cause to believe that another person

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- (a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself,
- (b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him, or
- (c) has shown or is showing a lack of competence to care for himself,

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and, if based upon the information before him, the person is of the opinion that the other person is apparently suffering from a mental disorder of a nature or quality that will likely result in

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- (d) serious bodily harm to that person,
- (e) serious bodily harm to another person, or
- (f) imminent and serious physical impairment of that person,

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and the circumstances are such that to proceed under section 9 would be unreasonable or would result in a delay that would likely result in serious bodily harm to that person or to another person or in imminent and serious physical impairment of that person, the person may take the other person in custody without delay to a medical practitioner or a hospital within the Territories for psychiatric assessment by a medical practitioner.

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Transfer to
peace officer

(2) A person who has apprehended a person pursuant to subsection (1) shall,

- (a) where a peace officer becomes available before he has taken the apprehended person to a medical practitioner or hospital for psychiatric assessment, transfer the custody of the apprehended person to a peace officer, and 5
- (b) where he delivers the apprehended person to a medical practitioner or hospital, provide the medical practitioner or hospital with a written statement relating the circumstances which led him to act. 10

Certificate of Involuntary Admission

Examination

13. Where a medical practitioner examines a person and has reasonable cause to believe that the person 15

- (a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself, 15
- (b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him, or 20
- (c) has shown or is showing a lack of competence to care for himself, 25

and, if based upon the information before him, the medical practitioner is of the opinion that that person is apparently suffering from a mental disorder of a nature or quality that will likely result in 30

- (d) serious bodily harm to that person,
- (e) serious bodily harm to another person, or
- (f) imminent and serious bodily impairment of that person, 35

unless the person remains in the custody of a hospital, the medical practitioner shall 35

- (g) admit the person as a voluntary patient to a hospital if he is of the opinion that the person is suffering from a mental disorder of such a nature or quality that the person is in need of the care or treatment provided in a hospital where the person has attained the age of majority and is mentally competent to give a valid consent and consents to being admitted as a voluntary patient; or 40 45

(h) apply to admit the person as an involuntary patient to a hospital by completing and filing with the Executive Member an application for a certificate of involuntary admission as set out in section 15, where the person has not attained the age of majority or is not mentally competent to give a valid consent or, if he has attained the age of majority and is mentally competent to give such a consent, refuses to be hospitalized as a voluntary patient. 5
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Involuntary admission pursuant to psychiatric assessment

14. Where a medical practitioner performed a psychiatric assessment pursuant to section 8, 9, 10, 11 or 12, he shall 15

(a) where the person is detained pursuant to section 8 or 9 and the period of detention has not expired, release the person if he is of the opinion that the person is not suffering from a mental disorder of a nature or quality that will likely result in serious bodily harm to that person or to another person; 20

(b) admit the person as a voluntary patient to a hospital if he is of the opinion that the person is suffering from a mental disorder of such a nature or quality that the person is in need of the care or treatment provided in a hospital where the person has attained the age of majority and is mentally competent to give a valid consent and consents to being admitted as a voluntary patient, or 25
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(c) apply to admit the person as an involuntary patient to a hospital by completing and filing with the Executive Member an application for a certificate of involuntary admission, as set out in section 15, if he is of the opinion that 35

- (i) the person is suffering from a mental disorder of a nature or quality that likely will result in
 - (A) serious bodily harm to the person, 5
 - (B) serious bodily harm to another person, or
 - (C) imminent and serious physical impairment of that person, 10
 unless the person remains in the custody of a hospital,
- and the person has not attained the age of majority or is not mentally competent to give a valid consent or, if he has attained the age of majority and is competent to give such a consent, refuses to be hospitalized as a voluntary patient. 15

Contents of application

- 15.(1) Where a medical practitioner applies to the Executive Member to admit a person as an involuntary patient, pursuant to paragraph 13(h) or 14(c), he shall, in the prescribed application, 20
- (a) state that he has personally examined the person who is the subject of the application and has made a careful inquiry into all the facts necessary for him to form his opinion as to the nature and quality of the mental disorder of the person; 25
 - (b) set out the facts upon which he formed his opinion as to the nature and quality of the mental disorder, distinguishing the facts observed by him from the facts communicated to him by others; 30
 - (c) state the date upon which the examination referred to in section 13 was performed or the psychiatric assessment referred to in section 8, 9, 10, 11 or 12 was performed; and 35
 - (d) indicate whether in his opinion the person ought to be transferred to a hospital outside the Territories. 40

Time to complete the application

- (2) A medical practitioner shall complete the application made pursuant to paragraph 13(h) or 14(c) within twenty-four hours of the examination referred to in section 13 or psychiatric assessment referred to in section 8, 9, 10, 11 or 12. 45

Order of medical practitioner

- (3) Where a medical practitioner decides to apply to admit a person as an involuntary patient pursuant to paragraph 13(h) or 14(c), he may order the detention of that person at a hospital within the Territories. 50

Authority of application

(4) An order made pursuant to subsection (3) is sufficient authority to detain the person who is the subject of the order in custody at a hospital within the Territories for a period not to exceed forty-eight hours from the time the examination referred to in section 13 was performed or the psychiatric assessment referred to in section 8, 9, 10, 11 or 12 was performed.

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Duties of Executive Member

16.(1) The Executive Member, upon receipt of an application made pursuant to paragraph 13(h) or 14(c), shall examine the application to ascertain if the medical practitioner

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- (a) has examined or performed a psychiatric assessment of the person who is the subject of the application; and
- (b) has completed the application as required by subsection 15(1) within the twenty-four hours referred to in subsection 15(2).

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Decision of Executive Member

(2) Once he has examined the application, the Executive Member may, within twenty-four hours of the receipt of the application referred to in subsection (1),

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- (a) refuse the application and release from custody the person who is the subject of the application;
- (b) order that another examination be made or psychiatric assessment performed of the person who is the subject of the application, within forty-eight hours of that order, before refusing or approving the application; or
- (c) approve the application and issue a certificate of involuntary admission in the prescribed form.

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Written report

(3) The medical practitioner who examines a person under an order made pursuant to paragraph (2)(b) shall report, in writing, to the Executive Member on the mental condition of that person before the expiration of the forty-eight hours stated in the order.

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Time for refusing or approving the application

(4) The Executive Member may, within twenty-four hours of the receipt of the report referred to in subsection (3), refuse or approve the application made pursuant to paragraph 13(h) or 14(c).

Authority of order

(5) An order made pursuant to paragraph (2)(b) is sufficient authority for a medical practitioner to detain at a hospital within the Territories the person named in the order for a period not to exceed seventy-two hours from the time that the person is detained under the order.

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Transfer of application to Commissioner	(6) Where the medical practitioner has indicated on an application, made pursuant to paragraph 13(h) or 14(c), that the person who is the subject of the application ought to be transferred to a hospital outside the Territories because a hospital within the Territories is not equipped to restrain, observe, examine or treat that patient, the Executive Member shall, once he has issued a certificate of involuntary admission, without delay, forward the application to the Commissioner.	5
Extension of time	17. Where the Executive Member, due to unusual circumstances, cannot approve and issue a certificate of involuntary admission within the time set out in subsection 16(2) or (4), he may order the extension of the period of detention set out in subsection 15(4) or 16(5) by one additional period which shall not exceed forty-eight hours.	15
Authority of the certificate	18. A certificate of involuntary admission is sufficient authority, for a hospital within the Territories to admit and detain the person who is the subject of the certificate and to restrain, observe, examine or treat him for a period not to exceed seventy-two hours from the time the person is admitted to a hospital pursuant to the certificate.	20
Certificate of transfer	19.(1) The Commissioner, upon receipt of an application which the Executive Member has forwarded pursuant to subsection 16(6) and having examined the application to ascertain that the provisions of this Act and the regulations have been complied with, may issue a certificate of transfer.	25
Authority of certificate	(2) Subject to subsection (3), a certificate of transfer issued pursuant to subsection (1) is sufficient authority to arrange to transfer and to transfer the person named in the certificate to a hospital outside the Territories.	30
No transfer	(3) Notwithstanding subsection (2), an involuntary patient who is the subject of a certificate of transfer shall not be transferred to a hospital outside the Territories where that patient has filed an application for review or appeal until (a) the review is heard and decided and the time for an appeal has expired or the applicant withdraws his application or the Supreme Court dismisses the application, or (b) the appeal is heard and decided or the appellant abandons the appeal or the Court of Appeal dismisses the appeal	40

unless a medical practitioner is of the opinion that a hospital within the Territories is not equipped to restrain, observe, examine or treat that patient.

Treatment

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Emergency treatment by a medical practitioner

20.(1) A medical practitioner who examines a person pursuant to section 13 or assesses a person pursuant to section 8, 9, 10, 11 or 12 may administer emergency medical or psychiatric treatment to the person being examined or assessed where

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- (a) the person has attained the age of majority and is mentally competent to give a valid consent, consents or, where the person has not attained the age of majority or is not mentally competent to give such a consent, the person's nearest relative consents; or 15
- (b) the person has attained the age of majority and is mentally competent to give a valid consent, refuses to consent or, where the person has not attained the age of majority or is not mentally competent to give such a consent, the person's nearest relative refuses to consent and 20
 - (i) the treatment is necessary to preserve the life or mental or physical health of that person, 25
 - (ii) the failure to give the treatment or delay in giving the treatment would create a reasonably foreseeable risk of injury to that person or any other person, and 30
 - (iii) the treatment cannot reasonably be delayed through alternative means of detention. 35

Emergency treatment by a nurse or a lay dispenser

(2) A nurse duly registered pursuant to the Nursing Profession Act or a lay dispenser shall not administer emergency medical or psychiatric treatment to a person who is in custody pursuant to section 9, 10, 11 or 12 unless

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- (a) that person cannot be immediately placed under the care of a medical practitioner; 45
- (b) the treatment is necessary to preserve the life or mental or physical health of that person;

	(c) the failure to give the treatment or a delay in giving the treatment would create a reasonably foreseeable risk of injury to that person or any other person;	
	(d) the treatment cannot be reasonably delayed through an alternative means of detention; and	5
	(e) the nurse or the lay dispenser communicates with a medical practitioner who authorizes the treatment or makes every reasonable attempt to communicate with a medical practitioner before administering the treatment.	10
Consent to treatment	21. Subject to section 22, a medical practitioner may administer medical or psychiatric treatment to an involuntary patient who has been admitted to a hospital within the Territories under the authority of a certificate of involuntary admission where	15
	(a) the patient has attained the age of majority and is mentally competent to give a valid consent and consents to receiving treatment; or	20
	(b) the patient has not attained the age of majority or is not mentally competent to give a valid consent or, if he has attained the age of majority and is competent to give such a consent, refuses to consent to receiving treatment, that patient's nearest relative consents to the treatment.	25
Exceptional treatment	22.(1) Treatment referred to in section 21 shall not include	30
	(a) psychosurgery or lobotomy, or other irreversible forms of treatment without the consent of a patient who has attained the age of majority and is mentally competent to give a valid consent; or	35
	(b) electro-convulsive shock without the consent of	
	(i) a patient who has attained the age of majority and is mentally competent to give a valid consent, or	40
	(ii) the patient's nearest relative where the patient has not attained the age of majority or is not mentally competent to give a valid consent.	45
Experimental treatment	(2) No experimental treatment involving any significant risk of physical or psychological harm shall be administered to a patient.	

Extension of Detention

Extension of
period of
detention

23.(1) Subject to subsections (2) and (3),
(a) where a certificate of involuntary admission has been issued pursuant to subsection 16(2) and a hospital within the Territories requires an extension to restrain, observe, examine or treat an involuntary patient; or

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(b) where a certificate of transfer has been issued pursuant to subsection 19(1) and a transfer of the involuntary patient to a hospital outside the Territories cannot be arranged within the period of detention referred to in section 18 due to extraordinary circumstances,

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a territorial judge may extend the period of detention referred to in section 18 for one additional period not to exceed fourteen days, upon the application of a medical practitioner supported by an affidavit.

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Time of
application

(2) An application made pursuant to subsection (1) shall be made before the expiry of the period of detention referred to in section 18.

Application

(3) The medical practitioner shall give notice to the patient and his nearest relative of the hearing of the application made pursuant to subsection (1) and state in his application

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(a) that he has personally examined the person who is the subject of the application and he is of the opinion that

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(i) the person is suffering from a mental disorder of a nature or quality that likely will result in
(A) serious bodily harm to that person,

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(B) serious bodily harm to another person, or

(C) imminent and serious physical impairment of that person,

unless the person remains in the custody of a hospital; and

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- (ii) the person has not attained the age of majority or is not mentally competent to give a valid consent or, if he has attained the age of majority and is mentally competent to give such a consent, refuses to be hospitalized as a voluntary patient; and 5
 - (b) the reasons for requesting the extension.
- Hearing (4) Prior to issuing an order to extend the period of detention pursuant to subsection (1), the territorial judge shall conduct a hearing on the application and hear evidence concerning 10
- (a) the alleged mental disorder, including medical evidence from the applicant; and 15
 - (b) any other matter he deems relevant.

Change From Involuntary
to Voluntary Patient

- Change from involuntary to voluntary patient 24.(1) An involuntary patient whose authorized period of detention under this Act has not expired may be continued as a voluntary patient 20
- (a) where he has attained the age of majority and is mentally competent to give a valid consent and gives his written consent; and
 - (b) upon the completion of the prescribed form by the medical practitioner and the filing of the form with the Executive Member. 25
- Notice (2) The medical practitioner shall notify, in writing, the involuntary patient's nearest relative of the change of status pursuant to subsection (1). 30

Escort

- Authority of escort 25.(1) An order by a justice pursuant to section 9, a certificate of involuntary admission or a certificate of transfer is sufficient authority to the person to whom it is addressed to take the person named in that order or certificate in custody and escort that person to a hospital named in that order or certificate. 35
- Duty of escort (2) The escort shall retain the custody of the person so taken and remain at the hospital until the hospital accepts the custody of the person. 40

Review of Decision to Detain

Application to Supreme Court	26.(1) An involuntary patient, or any person on his behalf, may apply to the Supreme Court for a review of any decision which authorizes an involuntary patient's detention under this Act.	5
Affidavit	(2) The application shall be supported by an affidavit of the applicant setting forth fully all the facts in support of the application.	
Authority of review	(3) An application made pursuant to subsection (1) is sufficient authority for a medical practitioner to detain at a hospital the involuntary patient who is the subject of the review until the review is heard and decided and the time for an appeal has expired or the applicant withdraws his application or the Supreme Court dismisses the application.	10 15
Order of examination	27.(1) Where the judge is of the opinion that an independent medical opinion is necessary, he may, prior to hearing the review, order the examination of an involuntary patient by a medical practitioner other than the one who has examined or assessed the patient.	20
Written report	(2) The medical practitioner who examines an involuntary patient pursuant to an order made under subsection (1) shall report, in writing, to the judge on the mental condition of that patient before the expiration of the time stated in the order.	25
Hearing	28.(1) The judge may hear evidence concerning (a) the mental condition of the person named in the application including (i) medical evidence, (ii) testimony from the medical practitioner who has initially examined or assessed the person detained as an involuntary patient and the medical practitioner who has submitted a report pursuant to subsection 27(2), if any, and (iii) psychological evidence; and (b) any other evidence the Court deems relevant.	30 35 40

Decision

(2) On an application for review pursuant to subsection (1), the judge may, within fourteen days of the application,

- (a) confirm the order or certificate authorizing the detention;
- (b) cancel the order or certificate authorizing the detention and order the discharge of the person; or
- (c) make any other order he considers appropriate.

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Appeal

Appeal

29.(1) Within thirty days of a decision of the Supreme Court under this Act, the involuntary patient, or any person on his behalf, may appeal to the Court of Appeal.

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Authority of appeal

(2) The appeal made pursuant to subsection (1) is sufficient authority for a medical practitioner to detain at a hospital the involuntary patient who is the subject of an appeal until the appeal is heard and decided or the appellant abandons the appeal or the Court of Appeal dismisses the appeal.

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Rehearing

(3) An appeal made pursuant to subsection (1) shall be a rehearing of the matter on the merits, and, in addition to any further evidence adduced by the applicant, the Court may direct that any transcript taken by the Supreme Court at the review hearing be put in evidence on the appeal and may direct that further evidence be given as it considers necessary.

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Appeal decision

(4) On an appeal pursuant to subsection (1), the Court may, within fourteen days,

- (a) confirm the decision of the Supreme Court;
- (b) quash the decision of the Supreme Court and order the discharge of the person; or
- (c) make any other order it considers appropriate.

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Persons on Remand or
Under an Order of the Commissioner

Application

30.(1) Sections 31 to 34 only apply to a person who is charged with or convicted of an offence pursuant to an Act of the Parliament of Canada, an Act of the Territories or a regulation.

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Exemption

(2) Sections 31 to 34 do not apply to a young person as defined in the Young Offenders Act.

Examination order	31.(1) Where in the opinion of a justice, territorial judge or judge, supported (a) by the evidence, or (b) by the report of at least one medical practitioner, in writing, where the prosecutor and the accused consent, there is reason to believe that a person who appears before him charged with or convicted of an offence, suffers from a mental disorder, the justice, territorial judge or judge, as the case may be, may order the person to attend a hospital as specified in the order and within the time stated in the order for observation for a period not to exceed thirty days.	5 10
Written report	(2) The medical practitioner who examines a person pursuant to an order made under subsection (1), shall report, in writing, to the justice, territorial judge or judge, as the case may be, on the mental condition of that person before the expiration of the time stated in the order.	15 20
Emergency treatment	(3) A person who is remanded to custody for observation may be given emergency treatment as specified in section 20.	
Remand	32.(1) A person who, pursuant to the <u>Criminal Code</u> (Canada), is remanded to custody for observation may be admitted to, examined and detained in and discharged from a hospital in accordance with the law.	25
Idem	(2) Subsection 31(2) applies to a person who is remanded to custody for observation.	30
Order of the Commissioner	33. A person who, pursuant to the <u>Criminal Code</u> (Canada), is detained under an order of the Commissioner because he was unfit to stand trial on account of insanity or insane at the time the offence was committed, may be admitted to, examined, treated and detained in and discharged from a hospital in accordance with the law.	35
No review or appeal	34. No review or appeal lies pursuant to this Act from an order made pursuant to sections 31 to 33.	

Rights of a Patient

Oral notice	35.(1) A medical practitioner shall inform a voluntary or involuntary patient and his nearest relative orally, in language which the patient and his nearest relative can understand, of the reason for his admission to a hospital and the need for care and treatment before admitting the patient to a hospital.	5
Written notice	(2) A medical practitioner shall give the involuntary patient and his nearest relative a written notice, within forty-eight hours of the examination or assessment pursuant to section 8, 9, 10, 11 or 12, stating (a) the authority for the patient's detention, and the period of the detention; and (b) the patient's right to consult counsel, to apply to the Supreme Court for a review of the decision to detain him and to appeal the decision of the Supreme Court.	10 15
Language of notice	(3) Where the voluntary or involuntary patient does not speak or understand the same language as the medical practitioner, the hospital shall obtain a suitable interpreter and provide the explanation or written statement referred to in subsection (1) or (2) in the language spoken by the voluntary or involuntary patient and his nearest relative.	20 25
Explanation or written notice repeated	(4) Notwithstanding subsections (1) and (2), where an involuntary patient is not in a state to comprehend the explanation or the written statement, the hospital shall, having regard to the circumstances in each case, ensure that it is given at the first reasonable opportunity once the involuntary patient is able to comprehend the explanation or written statement.	30
Posting of rights	(5) The rights of a patient set out in sections 35 to 41 shall be conspicuously posted in a hospital in places accessible to voluntary and involuntary patients.	35
Explanation of notice	(6) Where a patient does not understand the language of the notice posted pursuant to subsection (5), the hospital shall ensure that the patient's rights are explained to him in a language the patient understands.	40

Communication by and to a patient	36. No communication written by a voluntary or involuntary patient in a hospital or to a voluntary or involuntary patient in a hospital shall be opened, examined or withheld and its delivery shall not in any way be obstructed or delayed by any member of the staff at the hospital unless a medical practitioner considers that such communication would be detrimental to the patient's health or to another person and orders that any communication to or from that patient may be opened, examined or withheld.	5 10
Visitors	37. A voluntary or involuntary patient may communicate by telephone or receive visitors at hours fixed by the hospital unless a medical practitioner considers that such communication or visitors would be detrimental to the patient's health or to another person, but a patient may communicate by telephone with a lawyer at any time and a lawyer acting for the patient may visit the patient at any time.	15 20
Independent medical opinion	38. An involuntary patient has a right to an independent medical opinion regarding his mental disorder from a medical practitioner.	
Definition	39.(1) In this section, "abuse" includes any act which physically, mentally or emotionally injures, damages, causes undue discomfort or fear or takes unfair advantage of a patient.	25
Free from abuse	(2) An involuntary or voluntary patient has a right to security of the person and shall not be subject to any abuse at any time during observation, examination, care or treatment.	30
Offence	(3) Any person, other than a person who is suffering from a mental disorder, who contravenes subsection (1) is guilty of an offence.	
Discrimination prohibited	40.(1) No person shall directly or indirectly refuse to employ or continue to employ a person on the basis that the person previously suffered from a mental disorder.	35
Services and facilities	(2) No person shall discriminate against a person by denial, restriction or otherwise with respect to any service, facility, goods, accommodation, rights, licence or privilege available or accessible to the public or a section of the public, on the basis that the person previously suffered from a mental disorder.	40 45

Destruction
of records

41.(1) A person who was an involuntary patient and has been discharged from a hospital may request that all court records pertaining to proceedings under this Act or the regulations with respect to him be destroyed.

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Idem

(2) Upon receipt of the request made pursuant to subsection (1), the court shall destroy the records.

Absence Without Leave

Absence
without
leave

42.(1) Where an involuntary patient leaves a hospital without a leave of absence, the hospital may authorize a peace officer to return that patient to the hospital.

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Authority
of order

(2) An authorization given under subsection (1) is sufficient authority for a peace officer to apprehend the involuntary patient referred to in subsection (1) and return that patient to the hospital.

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Discharge

Discharge of
involuntary
patient

43.(1) Subject to subsection (3), a hospital shall discharge an involuntary patient

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(a) when he is no longer suffering from a mental disorder of a nature or quality that will likely result in serious bodily harm to himself, serious bodily harm to another person or imminent and serious physical impairment to himself;

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(b) when the Supreme Court or the Court of Appeal on review or appeal, as the case may be, cancels the detention authorized by this Act, a certificate of involuntary admission or an order to extend the period of detention and orders the discharge of that patient; or

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(c) at the expiration of a period of detention unless an involuntary certificate of admission or an extension of the period of detention has been obtained.

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Cancellation
of certificate

(2) Where an involuntary patient is discharged pursuant to paragraph (1)(a), the certificate of involuntary admission shall be deemed to be cancelled.

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Exception (3) Subsection (1) does not authorize the discharge into the community of a patient who is subject to lawful detention otherwise than pursuant to this Act.

Notice 44. When an involuntary patient is discharged from a hospital, the hospital shall, where possible, give notice of the discharge 5
(a) to the patient's nearest relative if the patient being discharged agrees;
(b) to the medical practitioner or hospital which referred the patient, if any; and 10
(c) to the Executive Member.

Protection of Privacy

Identity not to be published 45. No person shall publish by any means any report of a hearing, decision, review or appeal held or made pursuant to this Act concerning a person who is alleged to be suffering from a mental disorder, in which the name of that person or any information serving to identify such a person is disclosed. 15
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Private hearing 46.(1) Subject to subsection (2), no person other than an officer of the court, the parties and the nearest relative and their counsel and such other persons as the justice, territorial judge, judge or the presiding judge of the Court of Appeal, as the case may be, in his discretion expressly permits, shall be present at the hearing in all proceedings. 25

Exception (2) A hearing shall be public where a person who is the subject of the proceedings requests a public hearing. 30

Confidentiality of Records

Interpretation 47.(1) In this section
"patient's health record" "patient's health record" means the patient's health record compiled in a hospital or in the office of a medical practitioner or a psychologist in respect of a patient and includes any medical or psychological reports sent to the hospital by a medical practitioner or a psychologist; 35

"patient" "patient" includes a voluntary and involuntary patient and a former patient. 40

Disclosure of patient's health record

(2) Subject to subsections (3) and (5), no person shall disclose, transmit or examine a patient's health record.

Person who may examine the patient's health record

(3) A patient's health record may be examined by the medical practitioner and the person in charge of the hospital and the person in charge of the hospital may transmit the patient's health record to or permit the examination of the patient's health record,

- (a) where the patient has attained the age of majority and is mentally competent, by any person with the consent of the patient;
- (b) where the patient has not attained the age of majority or is not mentally competent, by any person with the consent of the patient's nearest relative;
- (c) by any person employed in or on the staff of the hospital for the purpose of assessing or treating or assisting in assessing or treating the patient;
- (d) by the person in charge of a hospital that is currently involved in the health care of the patient, who requests, in writing, to examine the record;
- (e) where the delay in obtaining the consent, as specified in paragraph (a) or (b), would endanger the life, a limb or a vital organ of the patient, without the consent of either the patient or his nearest relative, by a person currently involved in the health care of the patient in a hospital; or
- (f) by a person for the purpose of research, academic pursuits or the compilation of statistical data.

Removal of name or means of identifying the patient

(4) Where a patient's health record is transmitted or copied for use outside the hospital for the purpose of research, academic pursuits or the compilation of statistical data, the person in charge of the hospital shall remove from the part of the patient's health record that is transmitted or from the copy, as the case may be, the name of and any means of identifying the patient.

Disclosure of name or means of identifying the patient prohibited

(5) Where the patient's health record is disclosed to or examined by a person for the purpose of research, academic pursuits or the compilation of statistical data, the person shall not disclose the name of or any means of identifying the patient and shall not use or communicate the information or material in the patient's health record for a purpose other than research, academic pursuits or the compilation of statistical data.

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Disclosure pursuant to subpoena

48.(1) Subject to subsections (2) and (3), the person in charge of a hospital or a person designated, in writing, by him shall disclose, transmit or permit the examination of a patient's health record

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- (a) pursuant to a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction; or
- (b) where so required by an enactment.

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Statement by medical practitioner

(2) Where the disclosure, transmittal or examination of a patient's health record is required by a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction, or by any enactment and the medical practitioner states, in writing, that he is of the opinion that the disclosure, transmittal or examination of the patient's health record or of a specified part of the patient's health record is likely to result in

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- (a) harm to the treatment or recovery of the patient;
- (b) injury to the mental condition of another person; or
- (c) bodily harm to another person, no person shall comply with the requirement with respect to the patient's health record or the part of the patient's health record specified by the medical practitioner except under an order of
- (d) the court before which the matter is or may be in issue; or
- (e) where the disclosure, transmittal or examination is not required by a court, under an order of the Supreme Court,

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made after a hearing from which the public is excluded and that is held on reasonable notice to the medical practitioner.

Court may
examine

(3) On a hearing under subsection (2), the court shall consider whether or not the disclosure, transmittal or examination of the patient's health record or the part of the patient's health record specified by the medical practitioner is likely to result in

(a) harm to the treatment or recovery of the patient;

(b) injury to the mental condition of another person; or

(c) bodily harm to another person, and for this purpose the court may examine the patient's health record and, if satisfied that such a result is likely, the court shall not order the disclosure, transmittal or examination unless satisfied that to do so is essential in the interests of justice.

Return of
patient's
health record
to person in
charge

(4) Where a patient's health record is required pursuant to subsection (1) or (2), the clerk of the court in which the patient's health record is admitted in evidence or, if not so admitted, the person to whom the patient's health record is transmitted shall return the patient's health record to the person in charge of the hospital as soon as possible after the determination of the matter in issue in respect of which the patient's health record was required.

Disclosure
in action or
proceeding

(5) No person shall disclose in an action or proceeding in any court or before any body 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 hospital in the course of his employment in the hospital except

(a) where the patient has attained the age of majority and is mentally competent, with the consent of the patient;

(b) where the patient has not attained the age of majority or is not mentally competent to give a valid consent, with the consent of the patient's nearest relative; or

(c) where the court or, in the case of a proceeding not before a court, the Supreme Court determines after a hearing

(i) from which the public is excluded, and

(ii) that is held on reasonable notice to the patient or, where the patient has not attained the age of majority or is not mentally competent to give a valid consent, to the patient's nearest relative,

that the disclosure is essential in the interests of justice.

Government Records

Government records	49.(1) A department or agency of the Government of the Northwest Territories may keep records containing information obtained by the department or agency for the purposes of administering this Act.	5
Records may be made available to specified persons	(2) A record kept pursuant to subsection (1) may, at the discretion of the department or agency keeping the record, be made available for inspection to a medical practitioner, a hospital or any other person for the purpose of research, academic pursuits or the compilation of statistical data.	10
Research, study or statistics	(3) Where a record is made available, pursuant to subsection (2), for the purpose of research, academic pursuits or the compilation of statistical data, subsections 47(4) and (5) apply.	15
Estates		
Examination as to competency	50.(1) A medical practitioner who is examining or assessing a patient pursuant to section 8, 9, 10, 11, 12 or 13 shall examine the patient to determine whether or not he is mentally competent to manage his estate.	20
Certificate of mental incompetence	(2) Where a medical practitioner who performs an examination pursuant to subsection (1) is of the opinion that the patient is not mentally competent to manage his estate, he shall (a) issue a certificate of mental incompetence in the prescribed form; and (b) transmit the certificate to the Public Trustee.	25
Exceptional circumstances	(3) Where circumstances are such that the Public Trustee should immediately assume management of an estate, the medical practitioner shall notify the Public Trustee as soon as possible that a certificate of mental incompetence has been issued.	30
Exemption	(4) Subsections (1) to (3) do not apply to a patient whose estate is under committee ^{ship} pursuant to sections 12 and 12.1 of the <u>Public Trustee Act</u> .	35
Commencement of committee ^{ship}	51. The Public Trustee shall be committee of the estate of a patient who is named in a certificate of mental incompetence issued pursuant to subsection 50(2) and shall assume management of that estate upon receipt of a certificate of mental incompetence if the patient has no other committee.	40

Powers and
duties of
Public
Trustee

52. The Public Trustee who is committee of the estate of a patient shall have the same powers and duties as those conferred on him by the provisions of the Public Trustee Act concerning the estates of persons who are not mentally competent.

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Cancellation
of certificate
of mental
incompetence

53. The medical practitioner may, after examining a patient to determine whether or not that person is mentally competent to manage his estate, cancel the certificate of mental incompetence issued in respect of the patient and he shall forward a notice of cancellation in the prescribed form to the Public Trustee.

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Notice of
discharge

54. Where a certificate of mental incompetence has been issued, the person in charge of a hospital shall transmit to the Public Trustee a notice of the discharge from the hospital of an involuntary patient who was detained pursuant to this Act and the regulations and in respect of whom a certificate of mental incompetence is in force.

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Leave of
judge to
bring action

55. No person, other than the Public Trustee, shall bring an action as next friend of a person of whose estate the Public Trustee is committee under this Act without the leave of a judge of the court in which the action is intended to be brought, and the Public Trustee shall be served with notice of the application for such leave.

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Service of
documents

56. Where an action or proceeding is brought or taken against a person

- (a) who is suffering from a mental disorder and has been admitted to a hospital; and
- (b) for whose estate a committee has not been appointed,

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and the action or proceeding is in connection with the estate of the person, the writ or other document by which the action or proceeding is commenced and any other document requiring personal service

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- (c) shall be endorsed with the name of the hospital in or of which the person is a patient; and
- (d) shall be served

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- (i) on the Public Trustee, and
- (ii) on that person or, where the medical practitioner is of the opinion that personal service on that person would cause or would be likely to cause serious harm to him by reason of his mental condition, on the person in charge of the hospital.

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Miscellaneous

Limitation of actions	57.(1) Subject to subsection (2), all actions, prosecutions or other proceedings against any person or hospital for anything done or omitted to be done pursuant to this Act or the regulations shall be commenced within two years after the act or omission complained of occurred and not afterwards.	5
Computation of time	(2) The time during which a mentally disordered person is confined to a hospital for a mental disorder shall not be computed against him for the purposes of subsection (1) and that person may bring an action any time within two years after he has been discharged from a hospital and no longer suffers from a mental disorder.	10 15
Representative	58. Where a certificate of involuntary admission has been issued pursuant to this Act and a committee has not been appointed for the estate of the person named in the certificate, (a) that person may, where he has attained the age of majority and is mentally competent to do so, name a representative to commence an action or proceeding on his behalf; or (b) where the person named in the certificate has not attained the age of majority or is not mentally competent to name a person to commence an action or proceeding on his behalf, the Public Trustee may commence an action or proceeding.	20 25 30
Validity of documents	59. A certificate of involuntary admission, certificate of transfer or other order or form issued pursuant to this Act or the regulations shall not be held insufficient or invalid by reason only of any irregularity, informality or insufficiency in it or any proceedings in connection with it.	35
Exemption from liability	60. No person shall be liable for any loss or damage suffered by reason of anything done or omitted to be done by that person in good faith pursuant to or in the exercise of the powers conferred by this Act or the regulations.	40
Offence	61. Every person who contravenes any provision of this Act or the regulations is guilty of an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both.	45

Regulations

62. The Commissioner, upon the recommendation of the Executive Member, may make regulations
- (a) respecting the examination or psychiatric assessment of persons; 5
 - (b) governing the admission, detention, leave of absence, transfer, discharge and placement of patients admitted to a hospital pursuant to this Act; 10
 - (c) respecting the duties of an escort referred to in section 25; 10
 - (d) prescribing additional duties of a person appointed pursuant to section 5 or 6; 15
 - (e) prescribing the forms required for the carrying out of the provisions of this Act and the regulations; 15
 - (f) prescribing any matter or thing that by this Act may or is to be prescribed; and 20
 - (g) respecting any other matter which the Commissioner deems necessary or advisable to carry out effectively the intent and purpose of this Act. 20

Repeal

63. The Mental Health Act, R.S.N.W.T. 1974, c.M-11, is repealed.

Coming into force

64. This Act shall come into force on a day to be fixed by order of the Commissioner. 25

