

A PROPOSED REVISION OF THE MENTAL HEALTH ACT OF BRITISH COLUMBIA

The following is the result of five months of work by the Mental Patients Association (of Vancouver) on funding provided by the Donner Canadian Foundation.

After studying material in the fields of mental health and legislation and speaking with persons in these and other related areas, the research group came to the conclusion that major changes are needed in the present mental health legislation. The following is our recommendation for a revised mental health act, which we also recommend be instituted immediately.

We cite this as A Transitional Act Regarding Alleged Mentally Disturbed Persons; we consider that this revised act is only transitional. The reason for this is that the present mental health system is so repressive and unjust that major changes are needed immediately. Even more major changes, involving societal attitudes, new staffing and organizations, and new facilities are needed.

Truly humane care for persons suffering emotional distress does not arise from legislation alone. A major part of the problem in the mental health field today is inappropriate facilities, for example in-hospital patient care in large, remote institutions rather than in a wide variety of community based facilities. And until such time as the public and mental health workers become aware of the real nature of what is now called "mental illness" and appropriate concepts, staffing, organizations and facilities created, legislation must be adopted to protect the rights of those people

MENTAL PATIENTS ASSOCIATION
3191 WEST 10th AVENUE
VANCOUVER 8, B. C.
PHONE 738-1422

being forced to use the present institutions. Implementing this proposed legislation will not require a great deal of time or money; the essential changes are procedural.

The footnotes within the body of the text are the more or less basic questions and problem areas which arose in the writing of the second draft of the new act. We present them here for comments and advice from people who intend to go over the new act critically. If people have experiences in any of the areas covered by the proposed new act, we would appreciate hearing from them and any suggestions they may have.

The brief following our proposed revision of the mental health act offers detailed explanations and documentation for our changes.

= ----- =

PROPOSED MENTAL HEALTH ACT FOR BRITISH COLUMBIA, Second Draft

1. Title This Act may be cited as the TRANSITIONAL ACT REGARDING ALLEGED MENTALLY DISTURBED PERSONS.

PART I - Interpretation

2. Definitions In this Act, unless the context otherwise requires,
"mentally disturbed person" means a person suffering from a disturbance of the mind that makes care, supervision or control necessary because
 - (a) the person has threatened, attempted or inflicted harm upon the person of another and who as a result of a mental disturbance

presents an imminent threat of substantial physical harm to others; or

- (b) the person is in need of care without which it can be reasonably expected that he will suffer substantial, personal, physical injury due to his inability to care for himself and that the person is incapable, due to his condition, of making a rational choice as to whether or not he desires treatment.

[#1] The definition of what is a "mentally disturbed person" is the basis for involuntary hospitalization. We reluctantly felt it was needed because at the present time no act which did not provide for "dangerous persons" (subsection a) and for potential suicide (subsection b) would be passed. However suicide is no longer a crime; are we legally allowed to try and stop it? Also should we drop "as a result of a mental disturbance" from subsection a) and base this section on overt behaviour? This however would make this Act similar to criminal statutes; which is possibly too radical a change for the present times.

"mental health facility" means

- (a) a public hospital or any part thereof designated by the Minister as a mental health facility,
- (b) an observation unit designated by the Minister,
- (c) a private mental hospital licensed under Section 6 of this Act,
- (d) a Provincial mental health facility,
- (e) a community mental health centre;

"Minister" means the Minister of Health Services and Hospital Insurance;

[#2] "Alcoholics" and the "mentally retarded" were left out of this proposed act. We left these two groups out because we felt they require a different set of laws and for other reasons. What legal problems does this create?

[#3] We probably need more definitions; what are they?

PART II - Administration

Division (1) - Facilities and Services

3. Establishment of Facilities and Services The Lieutenant-Governor in Council shall establish and maintain facilities and services for the examination and treatment of mentally disturbed persons, and for that purpose shall, by order, authorize the Minister, for and on behalf of her Majesty the Queen, in right of the Province, to purchase, receive by way of grant or gift, or otherwise acquire, manage, occupy, and operate real and personal property.

[#4] We have changed "may" to "shall" in the first sentence of this section; what legal significance does this have?

4. Designation of Provincial mental health facilities
- (1) Every public mental hospital, mental health centre, clinic of psychological medicine, and child guidance clinic established under a Statute of the Province and in existence as such at the time of the coming into force of this Act is a mental health facility.
 - (2) The Lieutenant-Governor in Council may designate any building or premises as a mental health facility.
 - (3) The Minister may designate any public hospital or any part of a public hospital as a mental health facility.
5. Transfer of facilities The Lieutenant-Governor in Council may, by order, transfer a mental health facility or service or a part thereof

to a society, and shall, in the ~~order~~, designate

- (a) the terms and conditions of the transfer of the real and personal property that constitutes the mental health facility or service or part thereof;
- (b) the number of persons who are to be appointed to the board of management of that society by the Lieutenant-Governor in Council;
- (c) the requirements of inspection by the Director or his representative;

and he shall, in the order, give any necessary direction with respect to the transfer of officers and employees who are civil servants under the Civil Service Act from the mental health facility to a society; but he may direct that, notwithstanding the transfer, the officers and employees shall continue in the civil service of the Province. (Same as old Act, Section 6)

[#5] *Does this mean that Riverview could be transferred to the Mental Patients Association?*

6. Licensing of private premises (1) The Lieutenant-Governor in Council may license, for the care and treatment of mentally disturbed persons, any premises as a private mental hospital where he is satisfied that

- (a) the structure of the hospital and the accommodation and furnishings afforded therein are adequate in all respects for the housing, care, and treatment of persons; and
- (b) the hospital staff is qualified in number and training to care for and administer treatment to persons with any mental disturbance,

and may make regulations regarding these requirements as well as any other that may be deemed necessary or advisable.

- (2) One or more Inspectors for private mental hospitals licensed under subsection (1) shall be appointed in accordance with the Civil Service Act.
- (3) Every Inspector appointed under this section shall at all times have access to every part of every private mental hospital for the purposes of inspection, and during his inspection all records, documents, books of accounts, medical appliances and stores, including drugs, shall be made available to him, and he shall be given access to any person accommodated therein or any member of the staff. Notwithstanding anything in this section, the Inspector shall not have access to the personal records of a person accommodated in any private mental hospital where that person so desires.
- (4) No person shall receive into or cause to permit to remain in a private house for gain or payment any mentally disturbed person unless
 - (a) the house is licensed under subsection (1); or
 - (b) the house is a boarding home; or
 - (c) the house is a nursing home that is licensed under the Hospital Act to provide lodging, care and treatment to mentally disturbed persons; or
 - (d) the person is placed there with the approval and under the supervision of the Superintendant of a mental health facility.

(5) Every person who contravenes subsection (4) commits an offence.

7. Persons entitled to service Subject to sections 5 and 2, every resident of the Province is entitled to receive any service and to the accomodation in the facilities provided under this Act in accordance with the provisions of this Act and the regulations made hereunder. (Same as old Act, Sec. 7.)

Division (2) - Minister and Staff

8. Responsibility of Minister The Minister is responsible for the administration of this Act, and shall present the annual report of the Mental Health Branch of the Department of Health Services and Hospital Insurance to the Legislature at the sitting next following receipt of the report from the Deputy Minister of Mental Health. (same as old Act.)

9. Director of Mental Health Services

- (1) One or more Directors of Mental Health Services shall be appointed, in accordance with the Civil Service Act and a person so appointed shall be qualified on the basis of the person's training and/or experience.

[#6] *The old Act specified that the Director(s) be a "...physician recognized by the College of Physicians and Surgeons of British Columbia as a specialist in psychiatry." One of the intents of our proposed Act is to de-medicalize and de-professionalize the mental health field.*

- (2) The Director of Mental Health Services is responsible to the Deputy Minister of Mental Health for the standards of care and treatment within the mental health facilities of the Province. (Same as old Act, Section 9(2).)

- (3) The Director of Mental Health Services shall report to and solicit recommendations from the British Columbian Association of Psychiatric Nurses at least twice annually.

[#7] *Psychiatric nurses are given special responsibilities and privileges (much, much more than they now possess) in the new Act. This was done because they were felt to be closer to the persons (patients) than any other staff and because they had a more intimate knowledge of "patients". Aside from the validity of these ideas, giving psychiatric nurses special status seems to conflict with the general intent of de-professionalizing mental health. Should the portions of the new Act giving psychiatric nurses and their Association special rights and responsibilities be deleted or radically changed?*

10. Staff For each mental health facility, a Superintendent and such other staff as are required in order to provide adequate care and treatment shall be appointed pursuant to the Civil Service Act.
11. Duties of Superintendent The Superintendent of a mental health facility, subject to the supervision of the Director, shall
- (a) ensure that each person accommodated within the facility receives appropriate care and treatment;
 - (b) direct and control the treatment of all persons within the mental health facility;
 - (c) carry out, or cause to be carried out, all orders and directives of the Director;
 - (d) supervise the internal management of the mental health facility;
 - (e) report monthly to and annually to the Director on the affairs and condition of the mental health facility; and
 - (f) report to and solicit recommendations from the British Columbian Association of Psychiatric Nurses at least every second month.

- 11A. Reports All reports referred to in this division shall be made readily available to the public in libraries and other public buildings and shall be available for purchase by the public at a nominal cost.

Division III - Charges

12. Charges The Legislative Assembly of British Columbia may fix per diem charges for care, treatment, and maintenance provided in a mental health facility.

[#8] *In the old Act the Lieutenant-Governor in Council set charges, we wanted to place the power to set charges where it could be more openly discussed and reviewed.*

13. Assessment Committee

- (1) The Lieutenant-Governor in Council shall appoint an Assessment Committee, consisting of three members, who shall hold office during pleasure of the Lieutenant-Governor in Council and without remuneration.
- (2) Upon the recommendation of the Assessment Committee, the charges levied for the care, treatment, and maintenance of a person accommodated within a mental health facility may be modified or fully remitted, but not increased, for whatever period of time is designated in the recommendation.

14. Collection of charges

- (1) A guardian, committee, or other person liable for payment for a person accommodated within a mental health facility's care, treatment, or maintenance shall, on demand from the Superintendent of a mental health facility in which the person is or has been receiving care, treatment, or maintenance, make payments to the Superintendent in

accordance with the rates fixed under this Act.

- (2) The Superintendent may demand from a guardian, committee, or other person liable to pay for a person's care, treatment, or maintenance in a mental health facility, any sum due at any time, and may in default of payment sue on behalf of Her Majesty the Queen in the right of the Province for the recovery of the sum in any Court of competent jurisdiction.
- (3) An action under this section shall be taken in the name of the Superintendent.

[#9] Why in the name of the Superintendent? What legal principle?

- (4) Notwithstanding anything in this section, persons admitted under sections 23, 24 and 27 shall not be required to pay for their care, treatment and maintenance in a mental health facility, nor shall their guardian, committee, family or any other person liable for payment.

[#10] This means that those that are involuntarily committed do not have to pay for their "treatment". The reason for this is that there should be only two groups of people involuntarily committed under this Act; those who are dangerous to others, and those who are dangerous to themselves. The first group are segregated for the convenience and safety of society, and should not have to pay for something that is not primarily intended to benefit them (let alone for something they have not voluntarily chosen). Since suicide is no longer a crime, and presumably other forms of self-destruction are also not a crime, the second group by being involuntarily committed are forcibly receiving a "social service" which the mental health professions, with society's complicity, feels that the "potential" self-destructives are in dire and unknowing need of. After the potential or "possible self-destructives" are "cured" of wanting to do something that is not a crime, possibly they will be so grateful they will voluntarily reimburse the Province.

15. Admissions from penitentiaries The Superintendent of every mental

health facility shall ensure that no mentally disturbed person is admitted into any mental health facility from a penitentiary, prison, gaol, reformatory, or institution under the jurisdiction and administration of Canada unless Her Majesty the Queen in the right of Canada, by or through an officer having authority to act on her behalf, undertakes to pay all charges for care, treatment, and maintenance of that person. (same as old Act, Section 15 except "disordered" is now "disturbed".)

16. Expenses of conveyance and examination

- (1) When a person is unable to meet the expenses of his examination, the procedures for his admission to a mental health facility, or his conveyance to a mental health facility, the expenses are a charge on the local area in which he has residence.
- (2) When a local authority for a local area in which a person does not reside has advanced moneys to meet the expenses of the examination, procedures for his admission to a mental health facility, or the conveyance of the person to a mental health facility, the local authority may recover the moneys as a debt from the local area in which the person resided immediately before his admission.
- (3) When any dispute arises as to the liability of a local area under this section, the Board of Arbitration appointed under the Residence and Responsibility Act shall hear the dispute and make a final decision thereon.
- (4) When a municipality incurs expenses for the examination, procedures for admission, or conveyance of a person to a mental health facility,

the municipality may recover its expenses as a debt due from the person.

- (5) When a Superintendent incurs expenses for the examination, procedures for admission, or conveyance of a person to a mental health facility, the amount thereof shall be converted to and may be recovered as a charge in an equal amount for care and treatment in the mental health facility.
- (6) Persons conveyed or examined under Section 23, 24 and 27 of this Act shall not be responsible for these expenses.
- (7) Section 2 of the Residence and Responsibility Act applies for the purpose of interpretation of this section.

]#11] *Except for subsection (6) which frees involuntary committals from payment, this section is the same as the Old Act, section 16. See also not #10.*

17. Reciprocal arrangements

- (1) The Lieutenant-Governor in Council may, on behalf of Her Majesty the Queen in right of the Province, enter into or cancel a reciprocal arrangement with the Government of any other Province of Canada for the assumption of all or part of the charges incurred by a resident of one Province hospitalized in a public mental hospital or Provincial mental health facility in another.
- (2) The Lieutenant-Governor in Council may, on behalf of Her Majesty the Queen in the right of the Province, enter into or cancel an agreement with the Government of Canada for the sharing of costs of care and treatment of mentally disturbed persons. (same as old Act, section 17)

Division IV - General

18. Conveyance of persons

- (1) When a female person is conveyed to a mental health facility by order of the Admission Board, the authority charged with conveying the female person shall arrange for another female person or a near relative to accompany the person all of the time she is in conveyance to the mental health facility. Whenever possible the female person being conveyed shall have the right to choose the female person or near relative to accompany her.
- (2) All persons ordered conveyed to a mental health facility by the Admission Board shall have the right to select another person to accompany them for all of the time they are in conveyance to the mental health facility. It is the intent of this subsection that female persons have the right to select this accompanying person in addition to the other female person or near relative they select, whenever possible, to accompany them to the mental health facility.
- (3) All persons being conveyed to a mental health facility shall be conveyed individually unless it is against the wishes of two or more persons ordered to be conveyed to a mental health facility.
- (4) Whenever the Admission Board orders the police or someone else to convey an alleged mentally disturbed person to a mental health facility, the authority shall wear plain clothes and travel in unmarked vehicles and the person shall be conveyed kindly, respectfully and without undue use of restraint.

- (5) Unless the Admission Board so orders, the alleged mentally disturbed person conveyed by some authority or someone else, the person shall have the right to arrange transportation for himself. However a person ordered to a hearing by the Admission Board may request the Board to provide transportation, in which case the procedures and rights listed in this section shall apply.
- (6) The alleged mentally disturbed person shall be provided accomodation at the mental health facility nearest his community whenever such accomodation is available. If the person must be accomodated at a more distant facility, the person shall be transferred to the facility nearest his community immediately after accomodation there becomes available, provided that such transfer is in accordance with the person's wishes.

19. Saving

- (1) No person is liable in damages as the result of
 - (a) signing an application or laying an information;
 - (b) signing an order if the person is a member of the Admission or Review Board;
 - (c) signing an order if he is a Judge;
 - (d) issuing a warrant if the person is a Magistrate or Justice; or
 - (f) transporting or taking charge of a person on the authority of the Admission or Review Board's orders which on their face are lawfully completed in good faith and with reasonable care and provided the person has acted in good faith and upon reasonable and probable grounds.

- (2) No person shall take civil proceedings in respect of any of the acts enumerated in subsection (1) elsewhere than in the county where the act was performed.

[#12] *Is (c) and (d) needed in this Act? I don't think Judges, magistrates or justices sign orders or issue warrants in the proposed Act.*

[#13] *Why is subsection (2) necessary? In a modified form it is taken from the Old Act.*

20. Offences

- (1) A person employed in a mental health facility or a private mental hospital or any other person having responsibility for the care of a mentally disturbed person who ill-treats or wilfully neglects this person commits an offence punishable under the Summary Convictions Act.
- (2) A person who
- (a) fails to keep a person's mental health record open to him for inspection; or
 - (b) who divulges a person's mental health record to anyone except the Review Board of the facility in which the person is accommodated without the consent of the person commits an offence punishable under the Summary Convictions Act.

20A. No person shall be required to, or shall by his own volition undertake to convey, care for, control, or supervise a mentally disturbed person if this task is beyond his capacity or training.

[#14] *Why is section 20A needed? Also it belongs in some other section; 18?*

[#15] *In subsection (2) the term "mental health record" is used instead of "psychiatric record" to provide broadened coverage (are social worker reports part of a psychiatric record?) and to demedicalize the mental health field.*

PART III

Division (1) - Admission Procedures

21. Admission

- (1) Upon the recommendation of the Director, the Minister shall establish an admissions and review panel for each mental health planning region, composed of physicians who are recognized by the College of Physicians and Surgeons as being specialists in psychiatry, other mental health professionals, lay persons who have previously been under intensive mental health care, lawyers who are members of the Canadian Bar Association, psychiatric nurses, Judges, Magistrates, Justices, physicians who are not psychiatrists and other interested lay persons.

[#16] *Should we have more than one Panel for each Region, for example one panel for each 100 committed persons?*

- (2) At the beginning of each month the Superintendent shall select from the Admissions and Review Panel an Admissions and Review Board composed of five members. If any of these five members have previously admitted or reviewed any case which has come before him, that member will disqualify himself and another person shall be appointed.

[#17] *The intent of the proposed Act is to create a dispersal of power among persons and boards who review each other's decisions; so it is obvious that the Superintendent should not be the person to select the Admissions and Review Board. Also there will be more than one superintendant for each region in most cases. Who then should chose the Board?*

[#18] *What kind of problems will selecting a new board each month creat?*

[#19] *Do we need to deal with the question of payment for service on the board in this Act?*

[#20] *Probably the most important question is will there be enough Board members in British Columbia if a member must not hear or decide on a person's case twice?*

- (3) The Admissions and Review Board shall be composed of one psychiatrist, one lawyer, one lay person who has previously been under intensive mental health care, one psychiatric nurse and one other person.

[#21] *Should we change the "one psychiatric nurse" to "one other mental health professional"?*

- (4) Pursuant to sections 26 and 31, the Admissions and Review Board shall hold a hearing on all cases of persons which require the Board's authority for admission or further detention.

- (5) The hearing shall be held before an order for admission or for further detention is given. A four-fifths majority is required for any order.

[#22] *Will giving Board Members this power create any problems? (This note goes with subsection (6) below)*

- (6) A member of the Admissions and Review Board charged with hearing any case shall be given access to all information he may request in connection with the case to be heard.
- (7) The hearing shall be informal having due regard for the process of law including the right to call evidence, examine and cross-examine reports and any evidence which may be called, to make submissions and to require written reasons for decisions. The hearing shall be held in camera if it is the wish of the person whose case is being heard or open if the person so desires.

22. Voluntary admissions

- (1) Notwithstanding anything in this Act, a Superintendent or person having authority to admit persons to a mental health facility shall not admit a person to one of these facilities if:

- (a) the person could be more suitably cared for in another institution; or
 - (b) suitable accommodation is not available within the mental health facility for the care, treatment and maintenance of the person; or
 - (c) because of the nature of the person's disturbance, the person could not be treated or maintained appropriately in the facility.
- (2) With full consideration of the procedures outlined in this Act, the Superintendent shall admit any person who requests admission and who would, in the opinion of the Superintendent, benefit from the admission.
- (3) The Superintendent may admit any person to a mental health facility where
- (a) the person requests admission, if he has attained the age of 18 years or is an emancipated minor; or
 - (b) the person and a near relative or appointed guardian of the person requests admission, if the person has not attained the age of 18 years.

[#23] Do we need to make it possible for the parents or guardian of a non-emancipated minor ^{to admit the minor} when they and the Superintendent feel it will be beneficial but the minor is unwilling and is not a mentally disturbed person according to this Act.

[#24] Do we need a definition of an emancipated minor for this Act?

[#25] Is 18 a good cut-off age for this Act?

23. Involuntary admissions The Superintendent of a mental health facility may admit a person to and detain him in a mental health facility for a period not to exceed 14 days, where the Superintendent has received a written recommendation from the Admissions Board stating that the person should be admitted and detained.

[#26] Is it the intent of this Act that a Superintendent can veto a "recommendation" from the Admissions Board? If it is not we should change "may" and "recommendations" to "shall" and "order".

[#27] After 14 days the person is automatically released unless the Superintendent received a recommendation (order?) from the Review Board.

[#28] The Admission Board and the Review Board are just one board and can hear either admission cases or review cases. However since no Board member can hear a person's case twice (either for admission or review) the Board will have a shifting membership even within its one month term. The name of the Board changes only with its function. Possibly this is confusing and we should change this somehow?

24. Applications to the Admission Board

- (1) The Admissions Board shall hold a hearing to determine whether a person is a mentally disturbed person and shall be ordered to and detained in a mental health facility if they receive a written application made by anyone who has knowledge of the circumstances and the antecedents of the person, and who believes that the person is a mentally disturbed person according to this Act, and who the Admissions Board is satisfied as to the responsibility and integrity of the informant.
- (2) An application under subsection (1) shall be executed under the penalty of perjury and is not valid unless it is set forth therein

- (a) the full name, age and address of the applicant;
- (b) the relationship of the applicant (if any) to the person whose admission is being applied for;
- (c) the full name, age and address of the person whose admission is being applied for;
- (d) a detailed account of the reasons by which the applicant believes the person is a mentally disturbed person according to this Act;
- (e) a statement by the applicant that he has seen the person within 3 days prior to making the application;
- (f) the signature of the applicant and the date of the signature, together with whatever other information may be required by the form of the application prescribed and may be altered by the Lieutenant-Governor in Council.

25. Pre-hearing procedures

- (1) Where an application in accordance with section 24 is made to the Admissions Board, the Board may, if they are satisfied as to the responsibility and integrity of the informant, issue an order notifying the person to appear at a hearing at such time and place as designated by the notice. The order for appearing at a hearing shall be served by a peace officer, mental health worker or someone designated by the Board. The person serving the notice shall wear plain clothes and use an unmarked vehicle. Whenever possible the person ordered to appear for an Admissions Board hearing shall be

given 48 hours between the time notice is served and the time of the hearing. The person so ordered shall be immediately advised of all of his rights under this Act, including the right to request the presence of any person(s) at his hearing.

[#29] *There was much discussion in the research group about the advisability of giving a person the right to request voluntary admission at this point in the proceedings. This would have the effect of almost making involuntary admissions impossible. Possibly some compromise such as giving the person the right to request voluntary admission at this point but giving the Board the right to refuse the request and go on with the hearing or to approve the request and drop the hearing procedures.*

- (2) If the person fails to appear for the hearing after being properly notified, a peace officer(s), a mental health worker(s) or any person(s) appointed by the Board, wearing plain clothes and using an unmarked vehicle, shall take the person into custody and convey him to the place of hearing. The hearing shall be held forthwith and shall follow the procedures outlined in section 26.
- (3) (a) Where an application has been made to the Board, and if the Board is satisfied that the procedures listed in subsection (1) cannot be utilized without dangerous delay, the Board may issue a warrant which shall be the authority for the apprehension of the person and for his conveyance to a mental health facility forthwith.
- (b) The person conveyed to a mental health facility under clause(a) shall be given a hearing forthwith. If such a hearing is not carried out within 24 hours, excluding weekends and statutory holidays, the person shall be released. The hearing shall

follow the procedures outlined in section 26. If as a result of such hearing the person is found to be^a mentally disturbed person according to this Act, he shall be admitted into and detained in the facility.

- (c) Whenever action is taken under clause (a) the Admissions Board shall give written reasons why proceeding under subsection (1) was insufficient. Such reasons shall form part of the person's record and a copy of the reasons shall be sent to the Legal Aid Service.

[#30] Since it is the intent of this proposed Act that only those persons who are believed to be genuinely dangerous are ordered to appear before an Admissions Board, possibly the procedures listed in subsection (1) will rarely be used. And if the hearing must be held within 24 hours, the person may rarely have adequate time to prepare a defence. Sections 21 to 32 are the heart of this proposed Act and need to be examined carefully and critically.

26. Admission Board hearings

- (1) Those present at the hearing shall be the alleged mentally disturbed person, his counsel, his personal physician, members of the Legal Aid Committee if the person so desires, the applicant for admission, any person who has good reason to believe that the person whose case is being heard should or should not be detained, and any witnesses the aforementioned should choose to call.

[#31] Should the person have the right to waive the hearing? The hearing could be quite public, and a person whom the Admissions Board felt should be involuntarily committed might prefer to be committed without a "public" hearing?

- (2) No person shall be ordered into or detained in a mental health facility unless it is established that

- (a) the person is a mentally disturbed person in accordance with the definition given in this Act; and
 - (b) there is no other appropriate facility for the person and no other community service can be utilized; and
 - (c) suitable care cannot be provided without the use of an order for involuntary admission and detention.
- (3) The Admissions Board shall order
- (a) that the person be admitted and detained in the facility; or
 - (b) that the application be dismissed.
- (4) Where the application is dismissed the Admissions Board may make recommendations for the benefit and welfare of the person including referral to the appropriate community service. The Board must make clear that said recommendations are subject to the person's wishes and the final decision is to be made by the person.
- (5) An order made under this section is invalid after 14 days and a person shall be discharged forthwith unless an order for further detention is given by the Review Board pursuant to section 31.
- (6) A person whose application has been dismissed may request voluntary admission in accordance with section 22.

27. Prisoner admissions The Lieutenant-Governor in Council, upon receiving a recommendation from the Admissions Board completed in accordance with section 26 in respect of the mental condition of any person imprisoned in a gaol or lock-up in the Province or in any training school established under an Act of the Legislature, may order the removal of the person to a mental health facility, whereupon

- (a) the warden or other person in charge of the gaol, lock-up or training school, shall cause the person to be conveyed to the mental health facility named in the order; and
- (b) the person shall be detained in the mental health facility named in the order. If the Superintendent decides that another mental health facility would be more appropriate, the Superintendent shall make a recommendation for transfer to the Lieutenant-Governor in Council.
- (c) All persons detained under this section shall have their cases reviewed in accordance with section 31 of this Act.
- (d) All of the time spent in a mental health facility shall be considered part of the person's sentence.

[#32] First we need to specify who makes the application to the Admissions Board regarding a prisoner. The warden only, or any prison staff member, prisoner or any person having knowledge about the prisoner? This could (does?) challenge the power of wardens.

[#33] We will have to make distinctions between Federal and Provincial prisoners, for example in the matter of having a prisoner's mental health facility time count toward his sentence. The question is should we have a whole set of different procedures for Federal and Provincial prisoners?

[#34] Should we make it possible for prisoners to request voluntary admission? As it stands now in this Proposed Act, only "dangerous" prisoners could be committed to a mental health facility (within the definition of a mentally disturbed person in this Act).

28. Legal Aid Committee

- (1) A Director of Legal Aid shall be appointed for each hospital region by the Legislative Assembly of the Province. Each Director shall be responsible only to the Legislature and shall report annually to that body. Such reports shall be made readily available to the public.

The Director shall serve a two year term of office and shall appoint such other persons to a Legal Aid committee as are required to provide full legal services to all persons detained in the facility.

- (2) The Director of Legal Aid shall establish a Grievance Committee composed of persons detained in the facility and employees of the facility, not including physicians and administrators. The Grievance Committee shall be allowed to inspect the facilities and may make recommendations to the Superintendent of the facility and to the Legislative Assembly. Such reports shall also be made public.
- (3) All areas of the facility and all records shall be open to the Legal Aid and Grievance Committees for the purpose of inspection with the provision that any person may request that his record be kept confidential.
- (4) The Grievance Committee and the Legal Aid Committee shall meet together monthly.
- (5) The Administration of the facility shall act promptly on all recommendations made by the Legal Aid Committee and the Grievance Committee.

[#35]In subsection (1) what does "full legal services" mean and do voluntary admissions have the right to these services? Is the Legislature the right body to choose the Director of Legal Aid? Do we have Civil Service and other problems by having the Director appoint the Legal Aid Committee?

[#36]In subsection (2) should we have the Director choose the Grievance Committee? Possibly it should be elected? What proportion of patients? Can a person serve his term even if he or she is discharged? There is one Legal Aid Committee per mental health planning region but one Grievance Committee per facility. Should they have different functions, will they have problems meeting together, etc?

29. Rights of persons detained

- (1) In every place in which a mentally disturbed person may be held, copies of this Act shall be prominently posted, and any person confined therein shall be permitted access to and examination of copies of this Act. For persons illiterate or not fluent in English, provisions shall be made that this Act shall be explained in detail in a manner which is easily understandable. In addition any person detained in a mental health facility shall be given access to any and all material needed for the safeguarding and understanding of his legal rights under this Act.
- (2) With respect to any proposed change in a person's status, from voluntary to involuntary, from criminal to civil admission, transfer to another mental health facility or to a boarding home, being discharged or transferred to out-patient status, or any other significant change, the Superintendent shall cause notification to be given in writing to the person, the Legal Aid Service or to any other person(s) designated by the person currently detained. Whenever there is no question of a dangerous delay, there shall be 48 hours between the time the person receives the notice and the time the change is to take effect.
- (3) Each person detained in a mental health facility shall have the following rights, a list of which shall be prominently posted in all wards of all facilities, explained to each person by the Legal Aid Service, and otherwise brought to his attention by such additional

means as the Legal Aid Service, the Grievance Committee and the Superintendent shall designate. Each person in the facility shall have the right to

- (a) refuse all forms of treatment or therapy; this includes
 - 1. The right to refuse all forms of psycho-surgery.
 - 2. The right to refuse all forms of electro-convulsive (shock) treatments.
 - 3. The right to refuse all forms of drug treatment.
 - 4. The right to refuse insulin coma therapy.
 - 5. The right to refuse all forms of psychotherapy.
- (b) To see visitors freely every day,
- (c) To have reasonably access to a private telephone, both to make and receive confidential calls,
- (d) To have reasonable access to writing materials including stamps,
- (e) To mail and receive unopened correspondence,
- (f) To have provisions made so that the person may register and vote,
- (g) To have ready access to printed information regarding the various treatments that are used in this facility and those that are used elsewhere which give a detailed account of
 - 1. The methods and procedures.
 - 2. The benefits of that treatment.
 - 3. The side effects which may result from each treatment.

And such information shall be the subject of free discussion between the person and staff.

- (h) To have the choice of physician or other persons providing services in accordance with policies of each agency and within the limits of available staff,
- (i) To solicit and use independent medical and other professional opinion at public expense if necessary,
- (j) To wear ones own clothes; to keep and use personal possessions including toilet articles; and to keep and be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases,
- (k) To have access to individually locked storage space for his own use,
- (l) To have privacy within the space limitations of the facility,
- (m) To be notified of the whereabouts and availability of services and facilities in the institution,
- (n) To order any books from the library of the facility within the library budget and to be given free access to the library and publisher's book lists,
- (o) Wherever possible for provision to be made for continuation or furthering of the person's education, or employment training; in no instance shall this be forced,
- (p) To refuse to work in the facility. Any person who wishes to work on a voluntary basis may do so. Any person who wishes a

paid job in the facility shall be encouraged to apply for such job in the manner required and shall be given priority consideration over other applicants. The rate of pay for such work shall be equal to the established.

- (q) No person shall be discharged without suitable clothing adapted to the season in which he is discharged, the clothing shall be reasonably contemporary and if it cannot otherwise be obtained, the Superintendent shall order that the person be furnished with such clothing and money to defray his expenses until he can reach his relatives or friends or find employment. Where necessary the Superintendent shall see to it that the person discharged is covered by social security benefits.
- (5) Every person detained under the provisions of this Act shall be entitled to all the rights set forth in this section and shall retain all rights not specifically denied him under this Act.

!#371 Subsection (5) gives a person the right to conduct business matters while committed. And it seems to exclude involuntary admissions from all of the above rights.

The whole question of patient control over the non-treatment aspects of institutional life (such as libraries, private lockers, etc.) can be raised here. With the spreading of the concept of "therapeutic community" a claim is made that all aspects of institutional life can be made therapeutic and should be under the direction of the mental health authorities.

What other rights should we include?

[#38] Again civil service considerations are raised with the giving of priority to patients in applying for hospital jobs. Also there is a danger of excessive institutionalization by encouraging ex-patients to work in their ex-hospital. Also is some provision for people receiving some sort of welfare to provide personal spending money or for some people to work at less than the established rate necessary?

[#39] Should patients be allowed to refuse all medical treatments and any intrusions into their bodies (such as forced feedings)?

Should we attempt to outlaw psycho-surgery totally, even if people could be voluntarily talked into it.

Clause (g) is an attempt to demystify treatment. It is an unwritten rule in most mental hospitals that the staff does not openly talk about treatment with patients.

Division (3) - Discharge and Review

30. Discharge

- (1) Any person admitted under section 22 of this Act shall be permitted to leave the mental health facility at any time.
- (2) Any person admitted under section 23, 24 or 27 shall be detained for a period not exceeding 14 days, and he shall be discharged on the fifteenth day after his arrival unless authority for his detention is renewed in accordance with this section.

[#40] The principle here is that a person will be automatically discharged unless something is done i.e. a Review Board hearing authorizing further detention. Under the present Act it is just the opposite.

Section 27 covers prisoner commitments, since a prisoner is in a mental health facility at the pleasure of the Cabinet, a conflict arises here.

- (3) Authority for a persons detention may, unless the person has been previously discharged, be renewed under this section
 - (a) from the expiration of the period referred to in subsection(4) for a further period of 8 weeks;
 - (b) from the expiration of any period of renewal under clause (a) for a further period of 3 months and so on for periods of 3 months at a time.

- (4) Authority for detention of the person after his initial 14 day admittance rests with the Review Board, established under section 31 of this Act.
- (5) The Superintendent of a mental health facility or the officer in charge may discharge a person from the facility at any time.

[#41] *This sets the Superintendent up against the Admissions and Review Boards, is this what we want? Should the Superintendent be able to discharge a prisoner back to prison at any time?*

- (6) An application made under this Act is not effective for use for any of the purposes of this Act after the discharge of the person with respect to whom the application is made.
- (7) When a person is discharged from a mental health facility other than by the operation of section 27 subsection (3) the Superintendent of the facility or officer in charge, shall furnish the person with a certificate of discharge not longer than 24 hours after the person is discharged. Copies of this certificate of discharge, signed by the Superintendent or officer in charge, shall be available on the request of the person, free of charge, at any time in the future.

[#42] *Section 37 subsection (3) covers certain kinds of escapes. The main question here is do we want certificates of "sanity." Some members of the research group feel this is a bad idea. It helps perpetuate the myth that "sanity" and "insanity" are two different and separate human conditions, that they can be distinguished, and that the medical establishment can do it.*

31. Review Board Hearing

- (1) Those present at the hearing shall be the person to be reviewed, the person's counsel and any other person he requests, a psychiatrist

who has examined the person adequately on at least 5 occasions on 4 separate days in the two weeks preceding the hearing, the psychiatric nurse assigned to the patient, any person who has good reason to believe that the person's detention should or should not be further authorized, and any witness the aforementioned have appropriate reason to call.

[#43] *Should the patient have the right to waive a hearing. He may not want his life hashed over again in only two weeks (since the first hearing) but then again he could be subtly pressured into waiving a hearing that might release him.*

(2) The Review Board shall not authorize further detention of a person unless they establish that

- (a) the person is a mentally disturbed person in accordance with the definition given in this Act; and
- (b) there is no other appropriate facility for the person, and no other community service that could be utilized;
- (c) appropriate treatment or maintenance cannot be provided without the use of compulsory powers.

[#44] *Two clauses in the above section were dropped from the first draft after much debate; the person is receiving treatment and the treatment is effective.*

(3) The Review Board shall order

- (a) further detention for a period not exceeding the time specified in section 31; or
- (b) discharge of the person; or
- (c) transfer of the person to a more appropriate facility; or
- (c) release of the person on leave.

[#45] Obviously prisoners whose case is being reviewed will not be released on leave by order of the Review Board alone.

[#46] There was some question if leave was a good middle ground between commitment and discharge or if it could become a paternalistic, controlling device.

(4) The Superintendent shall carry out the orders of the Review Board.

[#47] It is becoming more and more obvious that we need to spell out the relationship between the Admissions and Review Board and the Superintendent.

(5) Nothing in this section shall prevent the discharge of a person before the expiration of his current period of detention, if in the opinion of the Superintendent the person should be discharged.

32. Prisoners and Remands

(1) All persons detained under section 27 of this Act, or under the Criminal Code of Canada, shall be eligible for review according to section 31 of this Act.

[#48] We need to know in what ways this proposed Act conflicts with the Criminal Codes of Canada and the Province.

[#49] Should we separate the way Provincial and Federal prisoners are dealt with?

(2) The Review Board for this section shall be selected from the Review Panel outlined in section 21, subsection (1) and shall be composed of a judge, a lawyer, a psychiatrist, a former prisoner who has undergone intensive psychiatric treatment and one other person.

(3) The procedure for the hearing shall be the same as that listed in section 31.

(4) The decisions of the Review Board are recommendations to the Lieutenant-Governor in Council.

[#50] And to who else? Who decides the fate of prisoner patients?

(5) After each review the Board shall report to the Lieutenant-Governor in Council stating fully the results of such review and recommending

(a) where the person in custody was found unfit to stand trial on account of insanity the person should now stand trial if, in the opinion of the Board

(i) the person has sufficiently recovered so that he is able to understand the nature of the proceedings and to instruct counsel in such a manner that the person's counsel can construct a reasonable defence; or

(ii) that the person be released on leave subject to conditions of section 34.

(iii) transferred to another institution if more suitable accommodation is available, provided this is in accordance with the person's wishes.

(c) where the person in custody was removed from a prison, that the person be

(i) discharged if the person is no longer liable to imprisonment,

(ii) returned to prison if the person is no longer a mentally disturbed person,

(iii) reclassified as a civil admission, either voluntary or involuntary, if the person is still mentally disturbed but is no longer liable to imprisonment. In this case the

date of reclassification shall stand as the date of admission.

(d) Any other recommendations as the Board sees fit.

[#51] This section obviously needs a great deal of work. We need to study the feasibility and possibility of all of the recommendation options of the Board.

[#52] Should we make it possible for a prisoner to request voluntary admission while he is still in prison? Our intent is to make it easier for a prisoner to be voluntarily in a hospital.

[#53] One problem is that our definition of "insanity" is radically different than a legal definition. As the proposed Act stands now, a person could be judged not guilty on account of insanity, committed to a hospital and then released almost immediately because he was not a mentally disturbed person according to this Act.

[#54] Clause (a) (ii) was intended to prevent a person from languishing forever, is this a good way of doing it? There was much discussion on this point.

[#55] Should we drop clause (d) and severely limit the possibilities of Board recommendations.

33. Transfers to other facilities

- (1) When a transfer to another institution is considered to be beneficial to the welfare of a person in a mental health facility, and where the person has been consulted and such transfer is not specifically against the person's wishes, the Superintendent may authorize the transfer and cause the person to be transferred in accordance with his direction.
- (2) The Superintendent of a mental health facility to whose facility a person has been transferred has authority to detain the person under this Act. The time limited by this Act for the doing of any thing shall run as if the person's detention were continuous in one facility.

[#56] There is the question of transferring a person to a facility out of the jurisdiction of this Act. Do we need to reword this section and make some provisions and specification?

- (3) Where the Lieutenant-Governor is satisfied that reciprocal provisions are, or will be made, in some other jurisdiction, whether within or outside Canada, he may, by order, declare that jurisdiction to be a reciprocal jurisdiction, and, so long as such order is in force, it shall be lawful, subject to any regulations in that behalf, to transfer a person detained, pursuant to any measure in that jurisdiction corresponding to this Act, to a mental health facility, and a certificate issued in accordance with such regulation shall be sufficient authority to convey such person to a mental health facility as if he had been transferred from another facility under this Act, and to detain him therein under this Act.

[#57] Same as Section 38A of the old Act. This covers transfers from anyplace in the world to B.C. What exactly does it specify.

34. Leave The Superintendent may release a person detained on leave, for designated purposes for stipulated periods of time upon such conditions as the Superintendent may prescribe, to the care of relatives or any other person whom the Superintendent believes is capable of and willing to assume responsibility for the person's care, subject to section 36.
35. Approved homes Subject to section 26, where the Superintendent of a mental health facility considers it beneficial to a person detained therein, he may cause the person to be transferred from the mental health facility to an approved home upon such conditions as the Superintendent may

prescribe. The Lieutenant-Governor in Council may make regulations for the selection and approval of approved homes and for the payment of the cost of the maintenance of the persons therein. (same as section 36 of old Act.

36A. Continuance of authority

- (1) For the avoidance of doubt, it is hereby declared that the release of a person on leave or his transfer to an approved home pursuant to section 34 or 35 does not, of itself, impair the authority for his detention, and that authority may be continued, according to the same procedures and to the same extent, as if the person were detained in a mental health facility.
- (2) A person who is on leave or has been transferred to an approved home shall, until discharged, be liable to recall either to the facility from which the person was released or transferred or, if the transfer is authorized by the Director pursuant to section 33, to some other facility; and the Superintendent of either such facility may issue a warrant in the Form B in the Schedule for the apprehension of the person and his conveyance to the facility to which he is recalled; provided that where a person escapes from the custody of any person to whose care he has been released on leave or from an approved home, the provisions of subsection (3) of section 37 shall apply.
(same as old Act, section 36A subsection (2).)
- (3) A person who is on leave or has been transferred to an approved home shall, until discharge, be eligible for review according to section 31 of this Act.

36. Exception Except as provided by Order of the Lieutenant-Governor in Council, sections 34 and 35 do not apply to a person

- (a) who was admitted to a mental health facility under section 27 or under the Criminal Code of Canada and remains liable to imprisonment or detention in a gaol, prison, or training school; or
 - (b) who is detained in a mental health facility by reason of any provision of the Criminal Code of Canada.
- (same as old Act, section 37)

37. Escapees

- (1) Where a person detained in a mental health facility leaves the facility without having been discharged under any other section of this Act, the Superintendent may, within sixty days after the date upon which the person leaves the facility, issue a warrant in Form B in the Schedule for the apprehension of the person and his conveyance to the facility.
- (2) Where a warrant is issued under subsection (1), all peace officers and other persons designated by the Superintendent shall render any assistance required in the apprehension of the person or the conveyance of the person to the mental health facility.
- (3) Except as provided in subsection (4), after the expiration of sixty days from the date upon which the person leaves the mental health facility under the circumstances set forth in subsection (1), he shall be deemed to have been discharged from the facility.

- (4) Where a person detained in a mental health facility escapes from the facility under the circumstances set forth in subsection (1) while charged with an offence or liable to imprisonment or considered by the Superintendent to be dangerous to himself or others, notwithstanding that the period of sixty days has elapsed since the date upon which he left the mental health facility, the Superintendent may issue a warrant in Form B in the Schedule for the apprehension of the person and the person's conveyance to a mental health facility, and the warrant is authority for the apprehension of the person and for the person's conveyance to the mental health facility.
- (5) Where a person escapes during the course of his removal or transfer to a mental health facility, both the Superintendent of the facility to which he is being removed or transferred and the Superintendent or officer in charge of the facility or unit from which he is removed or transferred shall have power to issue a warrant under this section.
- (6) A person detained in a mental health facility who leaves the facility, otherwise than on release on leave or transfer, without being discharged may be apprehended for the purpose of returning the person to the facility, within forty-eight hours of his escape, notwithstanding that no warrant has been issued under this section, and a person so apprehended shall be conveyed in custody to the facility from which he escaped or to some other facility to which the Director has authorized the person's transfer.

(7) Any person who leaves the facility otherwise than on release, on leave or transfer without being discharged and who has been at large for longer than 48 hours, and who has been apprehended according to this section, shall be formally readmitted to the mental health facility according to the procedure outlined in this Act. (subsections 1-6 are the same as the old Act, section 38, subsections 1-6.)

[#58] *We have taken quite a bit from the old Act near the end, we should re-examine this material to make sure it is within the spirit or intent of the new Act.*

/kc