

Draft Mental Health Act

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Ministry of Health

January 22, 2007

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Long title.

AN ACT TO PROTECT THE RIGHTS OF PERSONS WITH MENTAL ILLNESS, PROVIDE FOR THE CARE, TREATMENT, CONTINUING CARE, AND REHABILITATION OF PERSONS WITH MENTAL ILLNESS; ESTABLISH THE MENTAL HEALTH ADVISORY COUNCIL AND GRIEVANCE COMMITTEE; ESTABLISH DISTRICT REVIEW COMMITTEES; REPEAL THE MENTAL DISEASES ORDINANCE (CHAPTER 559); AND ADDRESS MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Preamble.

Recognising that health is a state of physical, mental and social well being and that mental health services shall be provided as part of primary, secondary and tertiary health services;

Recognising that mental well-being is fundamental to quality of life of individuals, families, communities and the country and that mental health services should aim to enhance people's well-being and functioning, reinforce their resilience and enhance protective external factors such as social integration, empowerment, social support and participation, social services, and social responsibility;

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Recognising the damaging associations between mental health problems and the social context in issues such as marginalisation, unemployment, substance and alcohol abuse, poor nutrition, injustice and discrimination, displacement, war, natural disasters, violence, and poverty;

Recognising that the Constitution of the Democratic Socialist Republic of Sri Lanka 1978 provides for freedom from degrading treatment and discrimination, equality before the law and protections of its citizens in Articles 11 and 12;

Recognising that the Constitution of the Democratic Socialist Republic of Sri Lanka 1978, provides for the advancement of the welfare of the disabled persons in its Article 12;

Recognising that the human and property rights of all persons require respect and protection and that, at times, persons with mental illness may need to be prevented from causing harm, as a result of their mental illness, to others or their property;

Recognising further that there is a need to promote the provision and quality of mental health services in a manner which promotes the optimal well being of the general population, groups at risk and users of mental health services; and

WHEREAS it is expedient to repeal the Mental Diseases Ordinance and to enact new legislation relating to the promotion and protection of mental wellbeing; prevention of mental illness; protection of the rights and property of persons with mental illness; encouragement of community care for persons with mental illness; and the provision of quality care, treatment, continuing care, and rehabilitative services of persons with mental illness.

NOW THEREFORE be it enacted by the Parliament of the Democratic

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Socialist Republic of Sri Lanka as follows:

Short title.

1. This Act may be cited as the Mental Health Act, No.of 2006.

PART I: FUNDAMENTAL PROVISIONS AND SCOPE

Objectives of the Act.

2. (1) The objectives of this Act are to -
 - (a) set out the rights and duties relating to mental health;
 - (b) establish required services and programs for promotion and protection of mental health; prevention, treatment, and care of mental illness; and rehabilitation;
 - (c) regulate access to and the provision of mental health services to –
 - (i) voluntary, involuntary and emergency mental health service users;
 - (ii) offenders and prisoners who are in need of mental health services.
 - (d) establish a Mental Health Advisory Council, Grievance Committee, and District Review Committees to regulate the mental health system of Sri Lanka.

PART II: RIGHTS AND DUTIES RELATING TO MENTAL HEALTH

Application of this Part.

3. The rights and duties of persons, bodies or institutions as set out in this Part are in addition to any rights and duties that they may have

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in terms of any other written law applicable in the Democratic Socialist Republic of Sri Lanka, including:

- (1) the right of freedom from degrading treatment and discrimination, equality before the law, and protection of citizens under Articles 11 and 12 of the Constitution;
- (2) Rights under existing laws governing employment; and
- (3) Rights under existing laws governing disabilities.

**Non-discrimination
and other rights.**

4. (1) Persons have the right to not be discriminated against on the grounds of their mental health status.
 - (a) “Discrimination” means any distinction, exclusion, or preference that has the effect of impairing equal enjoyment of rights under the Sri Lankan Constitution or other Sri Lankan laws.
 - (b) Special measures adopted solely to protect the rights, or secure the advancement, of persons with mental illness shall not automatically be deemed to be discriminatory, and employment of persons with mental illness shall be promoted through regulation.
 - (c) No individual shall, solely by reason of an actual or suspected mental illness, be excluded from participation in or be denied the benefits of the services, programs or activities of a public or private entity or be subjected to discrimination by any such entity, whether in employment, housing, or other services or benefits.
 - (d) Claims of discrimination shall be filed in accordance with prescribed regulations.

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(1) Every mental health patient shall receive care, treatment, continuing care, and rehabilitation services equivalent to that applicable to non-mental health patients.

(2) Every person with a mental illness shall have the right to live, work, and be treated and cared for in the community in which he or she lives. Where treatment takes place in a psychiatric unit, a patient shall have the right to be treated nearest to his or her home or the home of his or her relatives or friends, and shall have the right to return to the community as soon as possible.

Rights of primary carers.

5. Individuals certified as primary carers for persons with mental illnesses shall have the right to receive consideration from their employers in accordance with disability regulations.

Determinations concerning mental health status.

6. Any determination concerning the mental health status of any person shall be based on internationally accepted medical standards according to regulations established by the Mental Health Council.

Respect, human dignity, and privacy of mental health service users.

7. Every person has a right to be treated with respect for their person, human dignity, privacy, and cultural and religious beliefs, regardless of their mental health status.

Access to medicines.

8. Every person with mental illness has the right to have access to necessary medicines.

Physical health of inpatients in mental health facilities.

9. All patients in mental health facilities shall receive a complete clinical examination (physical and mental) in accordance with prescribed regulations.

10. A patient in a mental health facility shall have the right to receive

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standard management for all pre-existing and newly diagnosed physical illnesses during their stay and a referral for follow up care.

Property of mental health service users.

11. The property of mental health service users shall be administered in accordance with prescribed regulations.

12. The property rights of all mental health service users shall be protected by the District Court of the District of origin of that person or the jurisdiction where the property is located.

Requirement of consent for care, treatment, continuing care, and rehabilitation and admission to mental health facility.

13. (1) Upon admission, every patient shall have the right to have a medical officer examine him or her and determine the patient's capacity to give consent, make decisions, and enter into contracts. A patient's capacity shall be evaluated at regular intervals thereafter in accordance with prescribed regulations.

(a) A determination regarding capacity shall be based on personal examination of the patient.

(b) The medical officer shall conduct the examination and complete the prescribed form regarding the patient's capacity, including specific evidence as the basis of the determination.

(c) A determination regarding capacity may be appealed to the District Review Committee, as established in Part XI of this Act.

(1) Treatment shall not be given to a person with mental illness without his or her informed consent.

Exploitation and abuse.

14. (1) Every mental health service user has the right to receive services without being subjected to exploitation, physical or other

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abuse, neglect and degrading treatment, or invasions of privacy.

(2) Accordingly, every person, body, organisation or health facility providing mental health services shall take all reasonable steps to ensure that -

- (a) mental health service users are not subject to forced labour;
- (b) mental health services are provided for diagnostic and therapeutic purposes and not punishment or for the convenience of others;
- (c) mental health service users are not physically or otherwise abused by any other person; and
- (d) the privacy of mental health service users is respected.

(3) Every person witnessing the exploitation, physical or other abuse, neglect and degrading treatment of a mental health service user shall submit a complaint in writing to the District Review Committee of the District in which the abuse is alleged. In addition, mental health service users or their nearest relative or guardian or other third party suspecting exploitation, physical or other abuse may submit written complaints under this section.

**Confidentiality,
records, and access
to information.**

15. No person or health facility shall disclose to third parties any information about the person and their illness or treatment without the mental health service user's consent.

Provided, however, the head of the health facility concerned may

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disclose the information contemplated in this subsection to:

- (1) a court of law when called upon to do so;
- (2) a relevant health facility for the welfare of the mental health service user or the health of others; or
- (3) to the police or a threatened third party when there is imminent danger to the welfare of a third party.

16. A current or former patient shall have the right to have access to the information concerning the patient's health and personal records maintained by a mental health facility. A patient's access to their own record shall be in accordance with prescribed regulations.

Right to be represented.

17. A mental health service user has a right to be assisted by a relative or other representative in pursuance of his or her rights under the Act.

Ability of patients to enter into contracts.

18. A mental health facility shall have the duty to ensure that each patient in its care only enter into contracts or execute legal documents if a consultant psychiatrist finds the patient has the capacity to do so.

Discharge reports and referrals.

19. Whenever a mental health service user is discharged from a health facility at which the user was admitted for purposes of mental health service, the responsible medical officer shall prepare a discharge report on the prescribed form as may be required below and provide necessary referrals for follow-up care.

Referrals.

20. Upon discharge, the mental health facility shall provide referrals for follow up care in accordance with prescribed regulations.

Mandatory reporting of injury

21. Mental health units and wards or other health facilities shall report

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or death.

any serious injury or death of a mental health user undergoing treatment as an inpatient or outpatient of the facility in accordance with prescribed regulations.

Full knowledge of rights.

22. Every health care provider or health facility shall inform a mental health service user in an appropriate manner of that user's rights prior to and during the administration of services.

PART III: REQUIRED MENTAL HEALTH SERVICES AND FACILITIES

Promotion, prevention, and community services.

23. The Ministry shall work in close collaboration with other Ministries, departments, institutions, and non-governmental and private organizations to develop and regularly review such programs and services as it deems necessary for the promotion of mental health and the prevention of mental illness throughout the country.

Required facilities.

24. The Ministry shall provide a broad range of mental health facilities in accordance with the National Mental Health Policy of Sri Lanka and prescribed regulations.

Referral system.

25. The Ministry shall establish a referral system for outpatient and community mental health services.

Staffing and professional standards.

26. The Ministry shall staff required services and facilities.

27. The Ministry shall establish professional qualification and training requirements as it deems necessary for mental health workers and other health workers on issues related to mental health, both in the public and private sectors.

Services and programs for

28. In order to encourage and improve mental health services

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primary carers.

received in a home setting, the Ministry shall develop training programs and support mechanisms for primary carers.

**Research,
monitoring and
evaluation.**

29. The Ministry shall base its decisions and mental health programming on practice-based evidence and research.

30. The Ministry shall conduct regular monitoring and evaluation of prevention and promotion programs to determine their effectiveness.

PART IV: VOLUNTARY ADMISSIONS

**Voluntary
admission.**

31. (1) Any person who is desirous of submitting himself to treatment for mental illness may be admitted to any government or private health facility as a voluntary patient.

(2) Any person under the age of eighteen (18) may be admitted as a voluntary patient at the request of his or her parent or guardian.

(3) Children under the age of thirteen (13) years shall be admitted to paediatric wards. Adolescents between thirteen (13) and eighteen (18) shall be admitted to adolescent wards.

**Discharge of a
voluntary patient.**

32. (1) A voluntary patient may request his or her own discharge at any time, even before receipt of medical treatment.

(2) A voluntary patient may be discharged by the responsible medical officer in charge of the health facility where the officer is of the opinion that the mental state of the person is such as to render it unnecessary for that person to remain as a voluntary patient in that facility.

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- (3) Voluntary patients shall be discharged in accordance with prescribed regulations.

PART V: INVOLUNTARY AND EMERGENCY ADMISSION

Involuntary and emergency admission.

33. (1) An application for involuntary or emergency admission shall be made to the admitting medical officer of the psychiatric unit in accordance with the provisions of subsections (2) and (3) of this section.

(2) Such application shall

- (a) Be in the form set out in regulations;
- (b) Include a statement by any two of the following that sets out the reasons for requesting involuntary admission signed:
 - (i) a medical practitioner;
 - (ii) the nearest relative or guardian of the person with mental illness;
 - (iii) a mental health worker; or
 - (iv) a police officer.

(3) Each application shall be supported by a written statement by the admitting medical officer on the prescribed form stating that:

- (a) in his or her opinion, the person is suffering from mental illness.
- (b) the signs and symptoms of mental illness found on examination by him; and
- (c) the reasons why he or she considers involuntary

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admission for observation to a hospital with psychiatric facility necessary to:

- (i) save the person's life;
- (ii) prevent a serious deterioration of his or her condition;
- (iii) alleviate serious suffering by the patient; or
- (iv) prevent the patient from behaving violently or being a danger to himself or to others as a result of his or her mental illness.

(4) A second medical officer or a consultant psychiatrist shall then review the application and approve or deny it. Upon approval of the application, the admitting medical officer shall admit such person to such hospital for a maximum period of forty-eight (48) hours.

**Appeal of
involuntary and
emergency
admissions.**

34. The patient, his or her nearest relative or guardian shall have the right to file an appeal, as prescribed in S. 76 and related regulations, against an authorization for involuntary or emergency admissions under this Part to the Director of the Hospital within a period of fifteen (15) days from the day on which the authorization is granted. The Hospital Director shall review the authorization and either affirm the authorization in writing or order the patient's discharge within three (3) days of the filing of the appeal.

35. The decision of the Hospital Director may subsequently be appealed to the responsible District Review Committee within a period of fifteen (15) days from the day on which the Hospital Director affirms the authorization.

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- (1) The decision of the District Review Committee may be appealed to the Grievance Committee within fifteen (15) days of the issuance of the District Review Committee's decision.
- (2) The Grievance Committee shall issue a decision on the appeal within fifteen (15) days of the filing of the appeal.
- (3) The decision of the Grievance Committee shall be appealable to any District Court within fifteen (15) days of the issuance of the Grievance Committee's decision.

Appointment of patient representative.

36. Upon admission, the mental health facility shall request that the District Review Committee determine if a patient requires a representative and to appoint such a representative in accordance with prescribed regulations.

Acceptance of involuntary patients only with licence.

37. Government facilities, non-governmental organizations and private hospitals and nursing homes shall only admit involuntary patients if they have a valid licence under this Act and prescribed regulations.

Powers and duties of police in respect of certain cases.

38. (1) Every officer-in-charge of a police station of the area where any person within the limits of his or her station, whose behaviour is such that it may be dangerous to himself or to the society by reason of his or her behaviour, should directly remove that person to the nearest medical facility. No person should be taken into police custody because of his or her potentially dangerous, non-criminal behaviour except in emergency cases where all other courses of action have been exhausted.
- (2) No person taken into custody under subsection (1) shall be

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detained in custody without being informed of the reasons for his or her being taken into custody. In addition, the person's nearest relative or guardian or a community mental health worker shall be informed of the fact that the person is in police custody.

- (3) Every such person taken into custody under subsection (1) shall be taken to the nearest hospital within three (3) hours.
- (4) Such person shall be admitted to the closest psychiatric unit in accordance with the procedures laid down under S. 33.
- (5) A medical practitioner, a nearest relative, the guardian of a person with a mental illness or other mental health practitioner may, if he or she so desires, apply to the officer-in-charge of the police station of the same area in which the patient resides to provide assistance to escort such person to the closest government hospital or a private hospital for examination with a view to admission for observation or transfer to a mental health facility. It shall be the duty of the officer-in-charge of the police station to provide such assistance.

PART VI: DETENTION AND INVOLUNTARY AND EMERGENCY TREATMENT

Period of detention after admission of mentally ill patients.

39. A patient admitted involuntarily or on an emergency basis under Part V may be further detained for a period not exceeding thirty (30) days if, before the expiration of the initial forty-eight (48) hour period of detention, a consultant psychiatrist and a medical officer both determine and issue a written recommendation on the prescribed form indicating that further detention is necessary in order to:
 - (1) save the person's life;
 - (2) prevent a serious deterioration of his or her condition;

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- (3) alleviate serious suffering by the patient; or
- (4) prevent the patient from behaving violently or being a danger to himself or to others as a result of his or her mental illness.

Detention for a period of three months.

40. A patient may be further detained for a period not exceeding three months by virtue of a written recommendation on the prescribed form issued by a consultant psychiatrist and another medical practitioner if further detention is necessary in order to:
- (1) save the person's life;
 - (2) prevent a serious deterioration of his or her condition;
 - (3) alleviate serious suffering by the patient; or
 - (4) prevent the patient from behaving violently or being a danger to himself or to others as a result of his or her mental illness.

Application for admission for treatment for six months.

41. (1) The detention and treatment for a further period of up to six months shall be on the recommendation of an independent consultant psychiatrist and another medical practitioner. Such recommendation shall be sought in accordance with the procedures established by the Ministry of Health on the advice of the Mental Health Advisory Council.

- (2) The consultant psychiatrist's recommendation shall specify -
- (a) the reasons for the necessity of continued detention; and
 - (b) the appropriate type of facility for such detention.

Involuntary and continuing treatment.

42. (1) If the consultant psychiatrist determines that a patient is incapable of making a decision concerning treatment, then treatment (including Electro Convulsive Therapy) may be

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provided on an involuntary basis only if both the consultant psychiatrist and another medical practitioner agree to the necessity of the treatment based on independent examinations of the patient.

- (2) Upon discharge, a mental health service user shall undergo continuing care in the community if deemed necessary by the responsible medical practitioner.
- (3) In governmental, nongovernmental, and private settings, Electro Convulsive Therapy will only be given in line with latest evidence based practice and the Ministry's guidelines, and shall require the written approval on the prescribed form of a consultant psychiatrist and either the recipient's consent or the approval of a second medical officer, based on an independent examination of the patient.
- (4) Authorization for involuntary treatment and Electro Convulsive Therapy must be documented in writing on the prescribed form.
- (5) Both for inpatient and community care, treatment will be deemed necessary if it is required in order to prevent:
 - (a) the death, irreversible harm to, or serious deterioration of the health of the user
 - (b) serious suffering of the user
 - (c) the user inflicting serious harm to himself or others;
or
 - (d) the user causing serious damage to or loss of property belonging to him or to others.

**Emergency
treatment.**

43. If a patient lacks the capacity to give informed consent, the provisions of S. 42 shall not apply to any treatment-

- (1) which is immediately necessary to save the patient's life; or

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- (2) which (not being irreversible) is immediately necessary to prevent a serious deterioration of his or her condition; or
- (3) which (not being irreversible or hazardous) is immediately necessary to alleviate serious suffering by the patient; or
- (4) which (not being irreversible or hazardous) is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or to others.
- (5) Where any of the above conditions apply, emergency treatment may be provided only if both the consultant psychiatrist and another medical practitioner agree to its necessity. In the community, emergency treatment may only be provided if it conforms with the recipient's existing treatment regimen or after consultation, either in person or via telephone, with the psychiatrist under whose responsibility patient is receiving treatment.
- (6) For the purposes of this section treatment is irreversible if it has unfavourable irreversible physical or psychological consequences and hazardous if it entails significant physical hazard and includes the use of Electro Convulsive Therapy.

Seclusion.

44. Involuntary patients may be held in seclusion only in accordance with prescribed regulations.

Notice to patient, his or her nearest relative, or guardian.

45. The patient and his or her nearest relative or guardian shall receive written notice within twenty-four (24) hours of the order of detention or authorization for involuntary treatment.

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**Appeal of detention
and involuntary
treatment.**

46. The patient, his or her nearest relative or guardian shall have the right to an appeal, as prescribed in S. 76 and related regulations, against any order of detention or treatment under this Part to the Hospital Director within a period of fifteen (15) days from the day on which the involuntary detention or treatment is ordered.

The decision of the Hospital Director must be issued in writing within five (5) days of the filing of the appeal. This decision may be appealed to the responsible District Review Committee for the District in which the mental health facility is located within fifteen (15) days of the issuance of the decision. The District Review Committee shall issue a written decision within fifteen (15) days of the filing of the appeal.

Any appeal of the decision of the District Review Committee to the Grievance Committee shall be at the discretion of the Grievance Committee.

PART VII: RENEWAL AND DISCHARGE PROCEDURE

Renewal procedure.

47. The detention and treatment specified in S. 39, may be renewed on the first occasion after the first six month period for a further period of up to six months and subsequently for twelve months at a time.

(1) The recommendation for six and twelve month renewals shall be made by two consultant psychiatrists.

(2) Such renewals shall be appealable to the Hospital Director within a period of fifteen (15) days from the day on which the renewal is approved. The Hospital Director shall issue a written decision within five (5) days of the filing of the

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appeal.

- (3) The decision of the Hospital Director shall be appealable to the District Review Committee within a period of fifteen (15) days from the day on which the renewal is approved. The District Review Committee shall issue a decision within fifteen (15) days of receipt of the appeal.
- (4) Any appeal of the decision of the District Review Committee to the Grievance Committee shall be at the discretion of the Grievance Committee.

**Leave of absence
from hospital.**

- 48. The consultant psychiatrist may grant to any patient, who is for the time being to be detained in a mental health hospital unit or ward under this Act and is not a suspected or convicted criminal offender, leave to be absent from the psychiatric unit in accordance with prescribed regulations.

**Return and re-
admission of
patients absent
without leave.**

- 49. (1) Where a patient who is for the time being liable to be detained under the preceding provisions of this Act in the psychiatric unit -
 - (a) absents himself from the psychiatric unit without leave granted under the provisions of this Act; or
 - (b) fails to return to the psychiatric unit on any occasion on which, or at the expiration of any period for which leave of absence was granted to him under this Act or upon being recalled thereunder; or
 - (c) absents himself without permission from any place where he or she is required to reside in accordance with the conditions imposed on the grant of leave of

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absence under this Act,

he may, subject to the provisions of this Act, be taken into custody and returned to the hospital or other place where he or she is required to reside, by any police officer, community mental health worker or by any person authorised in writing by the medical officer in charge of the mental health hospital unit or ward.

**Change in status
from involuntary to
voluntary patient.**

50. If at any time during a involuntary detention the conditions which required the involuntary detention change, or if at any time during detention the patient gives full consent to remaining in hospital as a voluntary patient, the consultant psychiatrist will release the person from his or her detention and either discharge him or confirm in writing to him his or her status as a voluntary patient.

**Application for
discharge of a
detained patient.**

51. (1) An application in writing for the discharge of a patient who is liable to be detained in a mental health facility may be made by the nearest relative or guardian.

(a) Such an application may be made after giving at least forty-eight (48) hours notice in writing to the medical officer in charge of the administration of the psychiatric unit where the patient is detained;

(b) where the patient is detained under Part VIII or Part IX of this Act, he or she may not be discharged from hospital under this section of this Act.

(2) On receipt of the application made under subsection (1), the responsible medical officer shall issue a discharge order or, if further detention is required, a report certifying that in the opinion of that officer the patient if discharged -

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- (a) will act in a manner dangerous to himself or to other persons, or
 - (b) will not receive proper treatment.
- (3) The discharge order or report shall be provided to the medical officer in charge within forty-eight (48) hours of the submission of the request for discharge. In addition, a copy of the order or report shall be provided to the patient or other applicant for discharge.
- (4) No further application for the discharge of the patient shall be made during the period of one month commencing from the date of the report.
- (5) In any case where a report under subsection (2) of this section is furnished in respect of a patient, the medical officer in charge of the psychiatric unit shall cause the nearest relative to be informed and that relative may, within a period of thirty (30) days commencing from the day on which he or she is so informed, apply to the Hospital Director for the review of the detention or renewal order of such patient. The Hospital Director shall issue a decision in writing within five (5) days of the filing of the request for review. The decision of the Hospital Director may be appealed to the District Review Committee within fifteen (15) days of the issuance of the Hospital Director's decision.
- (6) A patient who is discharged may not be readmitted within 72 hours of discharge unless a consultant psychiatrist and another medical officer recommend readmission in writing.

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Discharge procedure.

52. (1) On discharge from an order for involuntary detention in hospital or for involuntary treatment in hospital a person so discharged will receive within forty-eight (48) hours of discharge written confirmation of the order of discharge from the hospital.
- (2) Upon discharge, the mental health facility shall provide a referral for any necessary follow-up care.
- (3) Where any discharged person does not have the necessary means to enable him to return to his or her home or other place of residence, the mental health facility shall convey the person to his or her home or other place of residence or provide such reasonable sum for his or her travel expenses.

PART VIII: MENTALLY ILL PRISONERS

Mentally ill prisoners.

53. (1) At least two prisons in the country shall have a designated mental health unit. Such a unit shall be equipped to provide mental health services as needed, in accordance with prescribed regulations.
- (2) If a court directs the reception of a mentally ill prisoner into any psychiatric unit or other facility, such an order shall be sufficient authority for the admission of such person in such unit or ward or facility.

Prisoners under sentence in jail or prison on becoming mentally ill to be removed to hospital.

54. (1) If any person under imprisonment in any jail or prison shall become so mentally ill that he or she cannot be treated outside a hospital, a report shall be made to the Minister of Justice by the District Court within whose jurisdiction the said jail or prison is situated, with a certificate of a consultant psychiatrist, that such person requires admission to hospital for observation or treatment, it shall be lawful for the Minister in charge of the subject of Justice

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to direct by warrant under his or her hand that such person shall be removed to the hospital named in such warrant, to be there detained until the expiration of the sentence under which such person may have been imprisoned. The person in charge of the place of imprisonment from whose custody any person shall be removed to such hospital shall furnish the consultant psychiatrist of that hospital with a copy of the sentence under which such person shall have been imprisoned.

(2) If any person detained in hospital under subsection (1) of this section who, in the opinion of the consultant psychiatrist no longer needs to be in hospital, the Minister of Justice shall upon receipt of this opinion issue a warrant directing that such person shall be removed from hospital to the jail, prison, or other place of confinement from whence he or she shall have been taken, or shall give such other orders thereon as the Minister of Justice shall deem fit.

(3) Any period spent in hospital under subsection (1) of this section shall count in full towards the period of sentence of imprisonment.

Discharge from detention after improvement in mental health.

55. A person ordered to remain in hospital under S. 54 who in the opinion of the consultant psychiatrist no longer requires detention in hospital may apply be discharged and sent to jail or prison to serve the remainder of his or her sentence. The jail or prison shall provide necessary follow up mental health services as indicated by consultant psychiatrist on the discharge order.

Further proceeding at expiration of sentence, if the person shall not have recovered.

56. The consultant psychiatrist of any hospital to which any person shall have been removed under the provisions of S. 53 or S. 54, and who shall not have recovered, shall, at least fourteen (14) days before the expiration of the sentence under which such person shall

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have been imprisoned, report the same to the Minister of Justice. At the expiration of said sentence, a person may be detained in hospital in accordance with Parts V, VI and VII of this Act.

PART IX: MENTALLY ILL SUSPECTED OFFENDERS

Mentally ill people held in police custody or on remand for a criminal trial.

57. (1) Persons in police custody, other than those referred to in S. 38, who are being held in custody for investigation of a criminal offence, or who have been charged with a criminal offence but not yet tried, or who are being held in jail pending trial for a criminal offence who are mentally ill are subject to this Part of the Act.

(2) The definition of criminal offence within this section of the Act is an offence of such severity that conviction will lead to a term of imprisonment.

Application for admission to hospital.

58. (1) The officer in charge of a police station or officer in charge of a jail who believes that he or she has custody of a person defined in S. 54 shall make application to the Magistrate or the Judge of the High Court with jurisdiction over the alleged offence for the person to be admitted to a psychiatric unit.

(2) The Magistrate or High Court on receipt of an application under subsection (1) of this section will order a consultant psychiatrist to admit the person to an available psychiatric unit for up to forty-eight (48) hours for assessment of medical need. During this time, the suspected offender shall reside in a secure area of the unit or ward.

Assessment.

59. After the period and process in S. 58(2), that is after the period of the order of up to forty-eight (48) hours, the consultant psychiatrist will recommend to the court either that:

(1) he is not mentally ill and may be returned to his or her

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- previous custody; or
- (2) that he or she is mentally ill and requires hospital admission; or
- (3) that he or she is mentally ill but may be treated in jail or place of custody or at home.

Hospital detention of mentally ill suspected offenders.

60. If a mentally ill suspected offender requires hospital admission, such orders may be made for up to one month, renewable on application for a further term of up to three months by a magistrate, or for up to three months, renewable on application for a term of up to a further six (6) months, by the High Court. Upon conclusion of the trial, the detention of the prisoner shall conform with the applicable parts of this Act.

Discharge from detention of mentally ill suspected offenders.

61. (1) On expiry of term or terms in S. 60, a suspected offender may either be discharged from hospital, or detained under Part V of this Act.
- (2) If during the period of hospital detention stipulated under S. 60 the person's mental health improves so that in the opinion of the consultant psychiatrist the person is no longer requiring hospital detention, the person will be discharged into the custody of the responsible court.
 - (3) If during the during the period of hospital detention stipulated under S. 60 the person is convicted of a crime and becomes the subject of an order under Part VIII of this Act, his or her detention under S. 60 ends, and orders for treatment shall be governed by Part VIII of the Act.
 - (4) The court must be notified forty-eight (48) hours prior to any discharge or transfer to detention under this Act.

PART X: ESTABLISHMENT OF THE MENTAL HEALTH ADVISORY COUNCIL AND

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GRIEVANCE COMMITTEE

Establishment of the Mental Health Council.

62. There shall be established a Mental Health Advisory Council (hereinafter referred to as “the Council”) and a Grievance Committee for the purposes of upholding the rights and duties established under the Act.

Composition.

63. (1) The Council shall consist of twenty members.

(2) The following members shall be appointed ex officio:

- (a) the Secretary of the Ministry or his or her nominee;
- (b) Director General of Health Services or his or her nominee;
- (c) the Director of Mental Health or his or her nominee;
- (d) the Secretary of the Ministry of Justice or his or her nominee;
- (e) the Human Rights Commissioner or his or her nominee;
- (f) the Secretary of the Ministry of Social Services and or his or her nominee; and
- (g) all of the provincial secretaries in charge of health or their nominees, who shall not be practicing mental health professionals;

(3) The Chairman shall be elected by the members of the Council from amongst their number.

(4) The other four members shall be appointed by the Minister as follows:

- (a) one member from the College of Psychiatrists,
- (b) a mental health or social work practitioner who is not a doctor;
- (c) a representative of primary carers; and
- (d) a representative of mental health service users.

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- (5) The quorum for the Council to meet and make decisions shall be ten members, including the chairman or his or her nominee.
- (6) Every member of the Council shall hold office for a period of four years.
- (7) A member who does not attend at least one meeting of the Council in a six month period shall be removed from office.
- (8) A member appointed in place of a member who is removed from, or otherwise vacates office, shall hold office, unless he or she is earlier removed from or otherwise vacates office, for the unexpired period of the term of office of the member whom he or she succeeds.
- (9) The Chairman and members may resign office by letter addressed to the Minister.
- (10) Every member of the Council shall be eligible for reappointment for a further four years.
- (11) Where a member is temporarily unable to discharge the duties of his or her office for more than three months on account of ill health, or absence from Sri Lanka, the Minister may appoint some other person to act as a member in his or her place.
- (12) The members of the Council shall be paid such remuneration as the Minister may determine in consultation with the Minister in charge of the subject of Finance.

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Duties of the Council.

64. The Council shall, by issue of advisory letters, be responsible for the providing advice and policy recommendations to the Minister of Health for the execution of the provisions of this Act.

65. The Council shall provide advice to the Ministry for the following functions:

- (1) Licensing of mental health units or wards to accept involuntary patients, as required under S. 37;
- (2) Authorization of psychiatrists to admit involuntary patients;
- (3) The procedures under which District Review Committees shall function;
- (4) Standards and guidelines for the determination of mental health status;
- (5) Development of training curricula and for the members of the District Review Committees and other mental health professionals as deemed necessary and in cooperation with relevant professional associations;
- (6) Content of code of practice to be implemented for achieving the purposes and objects of this Act as well as to be followed by all the mental health personnel involved with the care of persons with mental illness under this Act;
- (7) Appointment of members of and regulations governing a Board of Visitors to oversee provision of mental health services in prisons and jails; and
- (8) Content of regulations regarding seclusion of patients.

Powers of the Council.

66. The Council shall have the power to appoint a subcommittee of not less than three members to carry out any of the above functions, subject to any limitations established by regulation.

Reports to Parliament.

67. The Council shall publish an annual report of its work to Parliament.

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Meetings.

68. The Council shall ordinarily meet at least once per month at such time and place as may be fixed by the Chairman. Provided that the Chairman -
- (1) May call a special meeting at any time to deal with any urgent matter requiring the attention of the Council.
 - (2) Shall call a special meeting if he or she receives a requisition in writing signed by not less than four members and stating the purpose for which they desire the meeting to be called.

Staff.

69. The Minister shall make available to the Council all such staff, accommodation, equipment and other facilities as may be necessary to enable the Council to carry out its work effectively.

Expenses of the Council.

70. The expenses of the Council, including the remuneration and expenses of the Chairman and members, and all other expenditure incurred under the working of the Act, shall be defrayed out of moneys provided by Parliament for the purpose. The moneys required to meet such expenses in respect of any financial year of the Government may be included in the estimates for that year by the Ministry.

Grievance Committee.

71. The Grievance Committee shall be established in accordance with promulgated regulations.
72. The Grievance Committee shall have the power to:
- (1) to review the findings and actions of the District Review Committees on appeal within thirty (30) days;
 - (2) investigate individual patient issues and hear appeals;
 - (3) summon witnesses and order production of documents; and
 - (4) issue binding decisions and orders.

Appeals of Grievance Committee

73. Decisions of the Grievance Committee shall be appealable to the any District Court as specified in this Act or ensuing regulations.

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decisions.

PART XI: ESTABLISHMENT OF DISTRICT REVIEW COMMITTEES

Establishment of District Review Committees.

74. (1) There shall be established District Review Committees hereinafter referred to as “Committees” for the purpose of investigating complaints and dealing with applications and references by and in respect of mental health service users referred to in this Act for each District.

(2) Each Committee shall consist of three District residents, at least two of whom shall not be psychiatrists.

(3) The appointments to the Committees shall be made by the Provincial Secretary in charge of health for each Province.

(4) Every member of a Committee shall hold office for a period of three years unless he or she is removed from, or otherwise vacates, office earlier.

Provided, however, that a member appointed in place of a member who is removed from the position by the Council or otherwise vacates office shall hold office, unless he or she is earlier removed from or otherwise vacates office, for the unexpired period of the term of office of the member whom he or she succeeds.

(5) (a) A member may resign office by letter addressed to the Chairman of the Council

(b) The Council may remove a member of a Committee from office by resolution of the whole Council, without assigning any reason therefore.

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- (c) The Provincial Secretary shall, in accordance with prescribed regulations, periodically review Committee records to ensure full participation of Committee members. If a member of a Committee is not attending Committee business or otherwise satisfactorily completing Committee responsibilities, the Provincial Secretary shall notify the Council. The Council shall then remove such member and shall sanction him in accordance with prescribed regulations.
 - (d) Where a member is temporarily unable to discharge the duties of his or her office on account of ill health or absence from Sri Lanka, the Chairman of the Council may appoint some other person to act as a member in his or her place.
 - (e) Each committee requires a quorum of two to meet and make decisions.
 - (f) All decisions of a committee require the support of a minimum of two members of the committee.
 - (g) The members of each committee may be paid such remuneration as the Minister may determine in consultation with the Minister in charge of the subject of Finance.
 - (h) The Committee shall maintain records and document decisions in accordance with prescribed regulations.
- (6) Every member of a Committee shall be eligible for reappointment for a maximum period of six years.

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**Powers and duties of
the Committees.**

75. Each Committee shall:

- (1) Hear appeals of involuntary or emergency admission and detention according to S. 36;
- (2) Investigate complaints and take appropriate remedial action according to S. 14;
- (3) Inspect licensed mental health facilities within its area of responsibility once per month to ensure compliance with prescribed licensing requirements and may require the production of any records and documents for inspection to ensure that they are in proper order;
- (4) Oversee provision of mental health services in jails and prisons, which shall include yearly inspections of the existing mental health facilities;
- (5) If the Committee deems it necessary, make recommendations to a psychiatric unit, the Council and the Government concerning improvement of conditions of such facility;
- (6) Review determinations of capacity under S. 13; and
- (7) Investigate reports of injuries and deaths under S. 21.

**Appeals to a
Committee.**

76. (1) Appeals to a Committee shall be made under the regulations determined for such appeals, except in such cases and at such times as are expressly provided by this Act.

- (2) A patient who is admitted to a mental health unit in a hospital and subsequently detained under Part VI of this Act may appeal to a Committee at any time from the date on which he or she is so admitted in accordance with S. 46 and related regulations.
- (3) Any detained patient, or person authorised on his or her behalf to make an appeal to a Committee, may make only one application within the period of that order against detention or

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treatment.

- (4) Appeals to Committees shall be in writing by the patient with the support of either the psychiatrist or the nearest relative or person acting on behalf of the nearest relative. In the event of the patient being unable to give informed consent, the application may be made on his or her behalf without his or her consent by the nearest relative or person acting on behalf of the nearest relative.

**Appeals of
Committee
decisions.**

77. Decisions of the Committees shall be appealable to the Grievance Committee as specified in this Act or ensuing regulations.

**Power of Minister to
refer to a
Committee.**

78. The Minister may, at any time, refer cases of any patients who are liable to be detained under the provisions of the Act to a Committee for appropriate follow-up.

PART XII: APPLICATION OF OTHER LAWS

**Application of
Chapter XXXIX and
Chapter XL of the
Civil Procedure
Code in relation to
the appointment of
guardians.**

79. The provisions of Chapter XXXIX and Chapter XL of the Civil Procedure Code shall *mutatis mutandis* apply to the appointment of guardians under this Act.

**Application of
Chapter XXXI of
the Code of
Criminal Procedure
Code.**

80. The provisions of Chapter XXXI of the Code of Criminal Procedure Act, shall *mutatis mutandis* apply to the Criminal Proceedings under this Act.

**Application of
Chapter IV of the
Judicature Act.**

81. The provisions of Chapter IX of the Judicature Act, shall *mutatis mutandis* apply to the estates of persons of mental illness under this Act.

PART XIII: GENERAL

**Proceedings exempt
from stamp duty.**

82. No stamp duty shall attach or be payable for any application, process, or other document filed in court under the provisions of this Act.

Offences.

83. (1) Any person who -

- (a) wilfully contravenes any provision of this Act; or
- (b) furnishes for the purposes of this Act, any information which is, or any document the contents of which are, or any part of the contents of which is, to his or her knowledge untrue or incorrect;
- (c) fails to comply with an order of the Mental Health Advisory Council

shall be guilty of an offence and shall, be liable to a fine not exceeding five thousand rupees or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment, except as provided in this Part and prescribed regulations.

(2) Any employee on the staff of a mental health hospital unit or ward who ill treats, exploits, harms or wilfully neglects a patient for the time being receiving treatment for mental illness as a patient in that unit or ward shall be guilty of an offence and shall be liable to a fine not less than twenty thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment and ceases to be an employee of that mental health facility.

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- (3) No proceeding shall be instituted for an offence under subsection (1) and (2) except by or with the consent of the Attorney-General.
- (4) If a psychiatric unit operates in defiance of regulations without a license, such facility shall be liable to a fine not exceeding fifty thousand rupees.
- (5) The medical officer in charge of a mental health facility who shall at any time refuse admittance to the District Review Committee or offer hindrance to the inspection of the facility under S. 75 shall be guilty of an offence and be liable to a fine not exceeding fifty thousand rupees.

False, incorrect or untrue declaration or statement.

84. Any person who, by any means whatsoever, whether direct or indirect, wilfully makes any false, incorrect or untrue declaration or statement as to admission of mentally ill patients, shall be guilty of an offence and shall, on conviction before the District Court or High Court, be liable to a fine not exceeding ten thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

Sexual relations with patients.

85. (1) It shall be an offence for any person who is an employee in a mental health facility to have sexual relations with a person who is for the time being receiving treatment for mental illness as an inpatient or as an outpatient.

(2) Any person guilty of an offence under subsection (1) shall be liable to a fine not exceeding twenty thousand rupees or to imprisonment of either description for a term not exceeding three years or to both such fine and imprisonment.

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(3) No proceedings shall be instituted for an offence under subsection (1) except by or with the consent of the Attorney-General.

Appeals to the Court of Appeal.

86. Every order or decision by a District Court under the provisions of this Act shall be subject to an appeal to the Court of Appeal.

87. The time for, the rules of, and the practice relating to the filing and forwarding of an appeal from an interlocutory order of the District Court shall apply to appeals prosecuted under this Act.

88. The Court of Appeal shall take cognizance of such appeal and deal with the same as an appeal from an interlocutory order of the District Court, and make such order thereon as to the Court of Appeal shall seem fit. And it shall be the duty of the District Court to Conform to and execute such an order.

Regulations.

89. (1) The Minister may make regulation in respect of any matter required by this Act to be prescribed or in respect of which regulations are authorised by this Act to be made.

(2) Every regulation made by the Minister shall be published in the *gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall, as soon as convenient after its publication in the *gazette*, be brought before Parliament for approval. Every regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously

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done thereunder.

- (4) Notification of the date on which any regulation made by the Minister is so deemed to be rescinded shall be published in the *gazette*.

Substitution of the expression "mental illness" for "unsound mind" and "mentally deficient person" in any written law.

90. Every reference to "unsound mind" and "mentally deficient person" in any written law or document relating to this Act shall be read and construed as a reference to "mental illness" within the meaning of that expression as used in this Act.

Repeals.

91. The Mental Diseases Ordinance (Chapter 559) is hereby repealed.

Transitional provisions.

92. Notwithstanding the repeal of the Mental Diseases Ordinance Chapter 559 -

- (1) any application or order made or issued under that Ordinance shall be treated as though it had been made under the relevant provisions of this Act and may be proceeded with as though it had been so made;
- (2) any warrant or order for the detention of any person in terms of that Ordinance and in force immediately before the date of commencement of this Act shall be deemed to have been lawfully issued under the relevant provisions of this Act and shall remain in force until set aside or varied;
- (3) Any manager or curator applied under that Ordinance who had not been released from such appointment before the commencement of this Act, shall be deemed to have been appointed under the relevant provisions of this Act and any

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powers and functions conferred upon him under that Ordinance shall be deemed to have been conferred under the provisions of this Act;

- (4) any inquiry or other proceeding commenced in terms of that Ordinance which had not been completed on the date of commencement of this Act shall be continued and provided with under the relevant provisions of this Act as though they had commenced under this Act.

Sinhala text to prevail in case of inconsistency.

93. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Interpretation.

94. In this Act, unless the context otherwise requires –

- (1) “absent without leave” means absent from any psychiatric unit or other place where a patient is liable to be taken into custody and detained under this Act;
- (2) “capacity” refers to the presence of mental abilities to make decisions or to engage in a particular course of action;
- (3) “consultant psychiatrist” means a Medical Officer having the necessary qualifications certified by the Board of Study in Psychiatry of the Postgraduate Institute of Medicine;
- (4) “guardian” shall have the same meaning as in the Civil Procedure Code;
- (5) "hospital" means any government or private hospital;
- (6) “informed consent” means consent obtained freely, without threats or improper inducements, after appropriate disclosure

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to the patient of adequate and understandable information in a form and language understood by the patient and as further defined by prescribed regulation;

- (7) “involuntary” means without informed consent;
- (8) “medical officer” means a Medical Practitioner who is registered with the Sri Lanka Medical Council and registered under the Medical Ordinance;
- (9) “mental health” means a state of well-being whereby individuals recognize their abilities, are able to carry out activities for daily functioning, cope with the normal stresses of life, adapt to change, be productive, have fulfilling relationships with other people, and participate in their communities in the context of their age, physical capacity, and social and physical environment;
- (10) “mental health facility” means a psychiatric unit, a rehabilitation facility, or a long term facility;
- (11) “mental health practitioner” means any member of mental health staff who holds a government-recognised qualification and is employed in a mental health facility;
- (12) “mental health services” means all services provided by the government, non-governmental, or the private sector that are intended to promote and protect mental health, prevent mental illness, or provide care, treatment, continuing care, or rehabilitation to persons with mental illnesses;
- (13) “mental illness” means a condition listed as an ICD-10 diagnosis which seriously impairs, either temporarily or

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permanently the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms:

- (a) delusions;
- (b) hallucinations;
- (c) serious disorder of thought form;
- (d) a severe disturbance of mood;
- (e) sustained or repeated irrational behaviour indicating the presence of one or more of the symptoms referred to in paragraph (a) to (d);

(14) “Minister” means the Minister in charge of the subject of Health unless otherwise specified;

(15) “Ministry” means the Ministry of Health unless otherwise specified;

(16) “nearest relative” means:

- (a) husband or wife;
- (b) son or daughter;
- (c) father or mother;
- (d) brother or sister;
- (e) grand-parent;
- (f) grand-child;
- (g) uncle or aunt; or
- (h) nephew or niece.

in that order;

(17) “patient” means a user of inpatient mental health services;

(18) “primary carer” means the family member or other person who has the lead responsibility for caring for a person with

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mental illness;

(19) "psychiatric unit" means an in-patient ward or residential accommodation in a government hospital or in a approved private hospital or specialty mental hospital with facilities for the management of mentally ill patients designated by the Act;

(20) "secure" means guarded twenty-four (24) hours per day, every day of the year;

(21) "Sri Lanka Medical Council" means the Council registered under the Medical Ordinance; and

(22) "voluntary" means with informed consent.