

MINUTES forming ENCLOSURE to.....C.S.O.....No.....15.....1973

TO THE HONOURABLE THE MINISTER OF HEALTH:

I have the honour to submit the Final Report of the Committee appointed to review and make recommendations in regard to the Mental Health Act 1935-1974.

It is recommended that a new Act be framed to replace the present Mental Health Act and that the proposed Act be in two parts:

- (1) The treatment and protection of the mentally ill;
- and
- (2) The care and protection of the mentally handicapped.

PREAMBLE:

Without limiting in any way the operation of this Act, it is declared that the objectives of the Minister and the Health Commission, in the administration of this Act, include the following:

- (1) to afford the mentally ill the maximum advantage that care and treatment can offer, and provide the mentally handicapped with the care and protection required for their welfare, but to guarantee the minimum interference with their rights, dignity and self respect.
- (2) to establish, promote, rationalise and co-ordinate effective services and adequate facilities within the Health Commission and within the community for the prevention and treatment of mental illness and mental handicap and for the care and welfare of the mentally ill and the mentally handicapped among children, young people and adults of all ages.
- (3) to promote the mental health of the family by the provision and co-ordination of effective services designed to reduce the incidence of distress and the disruption of family relationships consequent upon mental illness or mental handicap.
- (4) to promote the mental health of the community by assisting individuals, families and sections of the community to overcome social and other problems with which they are confronted arising out of mental illness or mental handicap.
- (5) to assist and collaborate with voluntary agencies engaged in promoting and encouraging the dissemination of knowledge on mental health throughout the community or in providing services for the treatment of the mentally ill or the welfare of the mentally handicapped.

- (6) to collaborate with other departments of Government whose objectives directly affect the mental health of the individual, the family and the community.
- (7) to promote research into problems of mental illness and mental handicap and to promote education and training in matters relating to the preservation of mental health and the prevention of mental illness and mental handicap.
- (8) to promote generally an interest in mental health.

DIVISION I

The treatment and protection of the mentally ill

1. Nothing in this Division should prevent any person requiring treatment for mental illness from being admitted to any hospital with the facilities for his treatment without any formal application, request, order, direction or certificate rendering him liable to be detained under this Division of the proposed Act, or from remaining in any hospital after he has ceased to be liable so to be detained.
2. For involuntary admission to be justified, the following criteria would have to be met:
  - 2.1 The patient shall be suffering from a mental illness that requires treatment; and
  - 2.2 Such treatment can be obtained only as a result of admission to and detention in a hospital; and
  - 2.3 The interests of the health and safety of the patient or the protection of other persons cannot be secured otherwise than by such admission and detention.
- 3.1 It should be possible to commit a patient as an emergency admission to any hospital which has the facilities to treat his mental illness on the recommendation of a legally qualified medical practitioner. A patient so admitted should not be able to be detained for longer than 72 hours; and following admission the patient must be examined by a registered psychiatrist within 24 hours.
- 3.2 It is recognized that, outside the metropolitan area, this requirement that a patient be examined by a psychiatrist within 24 hours may not for the present be possible, and that the

examination must occur "where possible" in these circumstances. The ideal of an examination by a psychiatrist within 24 hours should however be retained.

- 3.3 The fee for any medical or psychiatric examination, at request of Police, should be a charge against the Health Commission.
- 4.1 The Hospital authorities should have the power to refuse an emergency admission if the receiving doctor could show good reason why the patient should not be admitted or if the person were considered to be not treatable in that hospital, but nonetheless a definite, alternative admission must be arranged by the refusing hospital, to safeguard against the Police or other persons responsible for conveyance from being detained for long periods conveying a patient from place to place.
- 4.2 All costs of transportation to a hospital or from one hospital to another should be a charge against the Health Commission unless the patient were covered by ambulance insurance.
5. On admission, each patient committed involuntarily and a relative of each patient so committed shall be given by the hospital authorities a clear multi-lingual printed statement describing the facilities and provisions of the psychiatric ward; and included in this a clear statement of the patient's legal rights in relation to hospitalisation, and how he can receive legal aid if desired.
- 6.1 Throughout this period emergency treatment should be provided in accordance with medical requirements and in the patient's interests, if possible but not necessarily with the consent of the patient and/or relatives. Such treatment would exclude experimental procedures and psychosurgery. No patient should compulsorily be detained in a hospital unless treatment likely to improve the patient or prevent deterioration is available.
- 6.2 Except in an emergency, no treatment will be given to any patient without the consent of the patient, a relative, his legal representative or the person to whom custodianship has been delegated by the Guardianship Board.

7. It should be possible for the emergency order to be extended by a further 21 days on the authority of a registered psychiatrist, provided that, if the initial emergency order were signed by a registered psychiatrist, the extension of detention could not be authorised by the same psychiatrist.
  
- 8.1 In the event that a patient proved unmanageable in the psychiatric ward of the hospital to which he had been admitted on an emergency order, or in any case after 24 days, if further involuntary detention were considered to be required for the protection of others, a patient would be transferred to a maximum care hospital on the authorisation of two registered psychiatrists, or in the absence of two registered psychiatrists, one registered psychiatrist and the medical superintendent of the hospital, provided that, if the initial emergency order were signed by a registered psychiatrist, the order for transfer to another hospital could not be authorised by the same psychiatrist.
  
- 8.2 Any patient so admitted to a maximum care hospital should, within a period of 7 days, be brought before the mental health review tribunal for confirmation of the transfer or discharge.
  
- 9.1 Throughout the period of involuntary admission each patient should have his case reviewed regularly and at least once in every six months with cause being given for continuing detention. In addition the patient should have the right of appeal in relation to detention and treatment. Appeals should be heard by an independent mental health review tribunal including a magistrate, a member of the medical profession (but not of the hospital staff) and one other member of the community. No person should have the right to appeal more than once in every 28 days.

- 9.2 In any appeal to the mental health review tribunal the patient should have the right to counsel (legal or otherwise) at the hearing, at no cost to himself.
- 9.3 If a patient or relative or any other person or persons regard the decision of the mental health review tribunal to be unsatisfactory, there should be provision for the right of appeal to a Court presided over by a Judge. This right of appeal to a Judge should be permitted only once in each calendar year.
- 9.4 Such appeals should be at no cost to the mentally ill person to whom legal aid should be freely available. However, if the appeal is lodged by a relative or some other person or persons and, the Judge considers the basis of the appeal to have been frivolous, costs may be ordered against that person or persons.
- 9.5 Provision should be made (as in Section 169 of Mental Health Act 1935-1969) for protection from liability of any person in respect of an act done in good faith in pursuance of this Act.
- 9.6 This protection from liability should extend to the registered psychiatrist or superintendent of a hospital who has acted under paragraph 8. The mental health review tribunal, if it decides to discharge a patient, should state that it is accepted the psychiatrist and superintendent acted in good faith in assuming the need to protect others.
10. In the case of patients admitted to the maximum care hospital, there should be provision for the Superintendent of the hospital, on the recommendation of the psychiatrist responsible for his treatment, to permit a patient to be absent from the hospital on trial leave for up to a maximum period of six months. Any

extension of trial leave beyond the initial maximum period of six months must be on the recommendation of the mental health review tribunal.

There should be provision for the cancellation of trial leave and for the return of the patient to the maximum care hospital.

- 11.1 There should be provision to permit a member of the Police Force to apprehend and convey a person who appears to be in need of treatment and protection because of apparent mental illness to a place of safety which may be a hospital, or any other suitable place, the occupier of which is willing temporarily to receive the person, but does not include a Police Station unless there is no hospital or other suitable place available. At the place of safety, the patient must be examined by a medical practitioner within 12 hours and might then, if recommended by the medical practitioner, be removed to a hospital willing to admit him.
- 11.2 There should also be provision, in a serious and urgent situation, for the Police or other persons involved to break and enter into premises and apprehend and remove a person suspected of being mentally ill and being in need of treatment in a hospital and requiring admission to and detention in a hospital in the interests of his health and safety or for the protection of others. The authority for such action should be granted to a Sergeant of Police or, in the country, to the Officer in Charge of the Station.
- 12.1 Provision should also be made to permit members of the Police Force to accompany and escort patients in an ambulance from a place of safety to a hospital as an emergency admission.
- 12.2 In the case of those patients who have to be transferred to a maximum care hospital because they prove unmanageable in the psychiatric ward of the hospital to which they have been



admitted on an emergency order, or in any case after 24 days, if further involuntary detention be considered to be required for the protection of others, provision should be made for members of the Police Force to accompany and escort the patient in an ambulance when this is considered essential by the referring psychiatrist or superintendent of the hospital.

- 13.1 Authority should be provided to compensate Police or other persons acting in pursuance of the Act against any damage or injury caused by mentally ill patients.
- 13.2 Provision should be made for the conveyance of any mentally ill person.
- 13.3 The costs involved in apprehension and conveyance to a place of safety should be a charge against the Health Commission.
14. A registered psychiatrist who deems a mentally ill person to be incapable of managing his affairs may make an application to the Public Trustee for the financial management of his estate.
15. It is proposed that the managers of psychiatric rehabilitation hostels could be licensed on the grounds that it would be an offence for the manager to accommodate one or more persons, not being members of the proprietor's family, who are on trial leave from the maximum care hospital to which a person has been committed for the protection of others.
16. It should be an offence if any person fails to comply with the procedures laid out in the Act for dealing with mentally ill persons or makes a false statement when seeking an emergency order or at a hearing before a mental health review tribunal,

DIVISION II

The care and protection of the mentally handicapped

- 17.1 These parts are concerned with those mentally handicapped persons who by reason of antisocial behaviour or social dependence and incapacity to manage their own affairs are deemed to need care and protection or to require oversight, care and control for their own good or in the public interest.
- 17.2 Mental handicap includes intellectual retardation, chronic mental illness, and mental infirmity because of age, decay of faculties or damage to the brain from whatever cause.
- 17.3 Nothing in this Division should prevent any parent from making arrangements for the informal admission of an intellectually retarded child to an appropriate training centre or any relative from arranging the informal admission of a demented person to a hostel or nursing home.
18. There should be a Guardianship Board consisting of persons appointed by the Governor, one at least of whom should be a magistrate, one at least of whom should be a medical practitioner and three other persons. One member at least should be experienced in the management and care of mental handicap.
- 19.1 Mentally handicapped persons thought to be in need of care and protection or to require oversight, care and control would be referred to the Guardianship Board which would determine whether the person required guardianship and/or custodial care and make appropriate orders.
- 19.2 The persons who may apply to the Guardianship Board for an order should include the person concerned, his spouse, a relative or

friend, the Public Trustee, the Police, or some other person who satisfies the Board that it is appropriate for him to apply.

20. In making an order, the Guardianship Board would have the following options:

- 20.1 Where it appears to the Guardianship Board that a person is incapable of managing his affairs through mental handicap, however occasioned, the Board should be empowered to make orders for the financial management of his property and to appoint the Public Trustee to manage the estate of that person. This should not be exhaustive; where the Board considers that such an order would not be proper or would not be in the best interests of the mentally handicapped person, it should be able to make such other orders as it sees fit.
- 20.2 In the absence of a responsible parent or relative, the Board could assume responsibility for certain important life decisions, such as permission for an anaesthetic or operation or abortion or prescription of contraceptives, or delegate the decision making to some responsible person.
- 20.3 In the absence of a responsible parent or relative, the Board could delegate its caring responsibility to a responsible person or officer in charge of a hostel, foster home, nursing home or institution.
- 20.4 If considered desirable and necessary by the Board, a detention order could be issued requiring a patient to undertake treatment shown to be beneficial to his mental health either from a private general medical practitioner, a private registered psychiatrist, a psychiatric outpatient department of an incorporated hospital, or by admission to the psychiatric unit of an incorporated hospital or to an approved private psychiatric hospital.

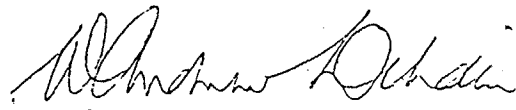
- 20.5 If a patient refuses to carry out the order made under 20.4, or is shown to be incapable of doing so, the Board should be able to order his admission to a hospital for treatment or be detained in a maximum care hospital for protection and treatment as the Board sees fit on the evidence before it.
- 21.1 The mentally handicapped person or his relatives should have the right to apply to the Guardianship Board to review its decision.
- 21.2 The mentally handicapped person or his relatives should have the right to appeal against any decision of the Guardianship Board to a Court presided over by a Judge. The right of appeal to a Judge should be permitted only once in each calendar year.
- 21.3 Such appeals should be at no cost to the mentally handicapped person. However, if the appeal is lodged by a relative or some other person or persons and the Judge considers the basis of the appeal to have been frivolous, costs may be ordered against that person or persons.
- 22.1 The Public Trustee is the appropriate Department to be responsible for the control of property of those certified to be unable to manage their affairs on a certificate from a registered psychiatrist.
- 22.2 There should be provision for the reversal of this procedure whereby the application requesting the Public Trustee to take action can be withdrawn on the certificate of a psychiatrist that the person is capable of managing his own affairs.
23. Many cases involving the management of the property of mentally ill or mentally handicapped persons arise out of circumstances

such as the gradual incapacity of the aged. In addition to requesting the Public Trustee to take action, provision should also be made for a person who is not incapable of managing his affairs to appoint someone to assume that responsibility in the future. The power should not be invalidated by the subsequent incapacity of the donor.

- 24.1 There should be provision to permit a member of the Police Force to convey a person who appears to be in need of care and protection because of apparent mental handicap to a place of safety which may be a hospital, or any other suitable place, the occupier of which is willing temporarily to receive the person, but does not include a Police station unless there is no hospital or other suitable place available. At the place of safety, the patient must be examined by a medical practitioner within 12 hours and might then, if recommended by the medical practitioner, be detained pending an investigation and determination by the Guardianship Board.
- 24.2 A mentally handicapped person detained in a place of safety must appear before the Guardianship Board within 7 days after being examined by a medical practitioner and recommended for investigation and decision by the Board.
- 24.3 Provision should be made for the conveyance of any mentally handicapped person.
- 25.1 The fee for any medical or psychiatric examination of a person who appeared to be in need of care and protection because of apparent mental handicap, at the request of the Police, should be a charge against the Health Commission.
- 25.2 All costs of transportation to a place of safety or from one place of safety to another, or to an appearance before the

Guardianship Board should be a charge against the Health Commission unless the person were covered by ambulance insurance.

25.3 Authority should be provided to compensate Police or other persons acting in pursuance of this Act against any damage or injury caused by mentally handicapped patients.



DIRECTOR OF MENTAL HEALTH SERVICES

17/12/75