

CAYMAN ISLANDS



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THE MENTAL HEALTH LAW, 2013

(LAW 10 OF 2013)

THE MENTAL HEALTH LAW, 2013

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CAYMAN ISLANDS

Law 10 of 2013.

I Assent

Franz Manderson

Acting Governor.

16th May, 2013

**A LAW TO REPEAL AND REPLACE THE MENTAL HEALTH LAW
(1997 REVISION) TO MAKE BETTER PROVISION FOR PERSONS
WITH SERIOUS MENTAL ILLNESSES OR MENTAL IMPAIRMENT;
AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Mental Health Law, 2013.

Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Governor in Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. (1) In this Law -

Interpretation

“assisted outpatient treatment” means outpatient treatment ordered by a responsible medical officer, or by a court on the recommendation of a responsible medical officer;

“Chief Medical Officer” means the Chief Medical Officer appointed under the Public Health Law (2002 Revision);

(2002 Revision)

“Commissioner” means the Commissioner of Police appointed under section 8 of the Police Law, 2010;

(Law 36 of 2010)

“common law partner” means a man or woman who cohabits with another person of the opposite sex as if they were legally married;

“confinement”, in relation to a patient, means the detention of the patient in a -

- (a) hospital;
- (b) prison; or
- (c) other place of safety;

“constable” means a police officer of the rank of constable of any grade and includes a recruit constable, auxiliary constable and community support officer;

“developmental disability” means a disability attributable to -

- (a) brain injury, cerebral palsy, epilepsy, autism, Prader-Willi syndrome, intellectual disability; or
- (b) other neurological condition closely related to intellectual disability; or
- (c) requiring treatment similar to that required for individuals with intellectual disability,

which has continued or can be expected to continue indefinitely and constitutes a substantial handicap to the afflicted individual but does not include dementia.

“Governor” means the Governor in Cabinet;

(2008 Revision) “guardian” means a person appointed as such by an order of the Grand Court made under section 14 of the Grand Court Law (2008 Revision);

“hospital” means a building or place where beds are available for the admission of persons requiring treatment for any sickness, injury or infirmity, who are given -

- (a) medical or surgical treatment; or
- (b) nursing care;

(2005 Revision) “medical doctor” means a medical doctor registered under the Fourth Schedule of the Health Practice Law (2005 Revision);

“medical officer” -

- (a) a psychiatrist registered under the Fourth Schedule of the Health Practice Law (2005 Revision); or

- (b) clinical psychologist who is registered under the Sixth Schedule of the Health Practice Law (2005 Revision) and, in addition, has a doctoral qualification in that discipline from a country or institution referred to in regulation 6 of the Health Practice Registration Regulations (2005 Revision),

and is employed by, or is allowed to use the medical facilities of, the Government of the Islands, a statutory body or government company;

“Mental Health Commission” means such Mental Health Commission as may be established under any Law;

“mental impairment” means a state of arrested or incomplete development of mind, which may or may not be due to a trauma or injury and includes significant impairment of intelligence and social functioning and which may or may not manifest itself in abnormally aggressive or seriously irresponsible conduct;

“mental health professional” means a practitioner registered in a mental health category under the Health Practice Law (2005 Revision); (2005 Revision)

“Minister” means the Member of Cabinet charged with responsibility for health;

“nearest relative” a person of at least eighteen years of age, whether or not living in the Islands, who is -

- (a) spouse or common law partner;
- (b) son or daughter;
- (c) parent or legal guardian;
- (d) brother or sister;
- (e) grandparent;
- (f) grandchild;
- (g) uncle or aunt;
- (h) nephew or niece;
- (i) a social worker or probation officer employed in that capacity in government or a statutory body;
- (j) attorney at law of the person concerned;
- (k) the mental health professional treating the person concerned; or
- (l) close friend;

“patient” means a person who is suffering from or is suspected to be suffering from a serious mental illness or mental impairment;

“place of safety” means a place declared under section 20 for purposes of receiving and caring for persons;

“responsible medical officer” means the medical officer who is responsible for the observation, care, treatment of a patient;

“serious mental illness” a substantial disorder of thought, mood, perception, orientation or memory which -

- (a) grossly impairs a person’s -
 - (i) judgement;
 - (ii) behaviour;
 - (iii) capacity to recognize reality; or
 - (iv) ability to meet the ordinary demands of life; or
- (b) poses a danger to the person concerned or others,

but does not include a sole diagnosis of alcoholism or drug abuse, that is, a diagnosis of alcoholism or drug abuse without any other ailment of a mental nature; and

“treatment” means -

- (a) care;
- (b) diagnostic and therapeutic services, including the administration of drugs; and
- (c) provision of medication;
- (d) periodic blood tests or urinalysis to determine compliance with prescribed medications;
- (e) individual or group therapy;
- (f) day or partial day programming activities;
- (g) vocational, educational or self- help training;
- (h) vocational, educational or self-help activities;
- (i) assertive community treatment team services;
- (j) alcohol or substance abuse alleviation and counseling;
- (k) periodic tests for the presence of alcohol or illegal drugs;
- (l) supervision of living arrangements; and
- (m) any other services within a local or unified services plan developed under this Law.

(2) Wherever in this Law mention is made of a medical review or direction, or both, in relation to an assisted outpatient treatment order, the medical review or direction, or both, shall be provided under the supervision of a medical officer responsible for the patient concerned.

Application

3. (1) This Law does not apply to a person on the sole ground that -
- (a) he has voluntarily sought treatment for a mental illness, serious mental illness or mental impairment; or

(b) he is acutely intoxicated.

(2) For purposes of clarification it is declared that this Law shall apply to a person referred to in subsection (1) only if he is certified as having mental impairment or serious mental illness under this Law.

4. The authority of a guardian over a patient takes precedence over the authority of any other person.

Guardian's authority
takes precedence

5. Where a guardian or nearest relative is of the opinion that a person may be suffering from a mental impairment or serious mental illness, or is not compliant with treatment related to his mental illness, he may report the matter to a medical officer.

Request for review

6. (1) If the medical officer is of the opinion that the person is or may be suffering from mental impairment or serious mental illness, he may order the detention of that person in a hospital or other place of safety for up to 72 hours and, if he does so, shall in writing as soon as practicable thereafter inform the Mental Health Commission, supply it with a copy of this professional opinion and otherwise comply with any regulations that may be made in that regard.

Emergency detention
order

(2) The patient or nearest relative may within 24 hours of the order being made request a second opinion from another medical officer and if the second opinion does not recommend the issuance of an emergency detention order, the order shall not be made and the medical officer who issues the first opinion shall refer the matter, together with all records, to the Commission, which shall make such decision as it thinks fit.

(3) A patient who is detained under this section but who is of the opinion that there were no reasonable grounds for making the emergency detention order may, at any time after the making of the order and up to 14 days from the expiration of the order, personally or through a nearest relative, file an appeal with the Mental Health Commission and the Commission may affirm or expunge the order.

(4) Where a patient has been detained and released under an emergency detention order three or more times in thirty days, the Mental Health Commission may, on its initiative or that of the patient personally or by a nearest relative, review the patient's files and related records and make such recommendation in relation to the care of the patient as it thinks fit.

(5) After an emergency detention order has been made, the medical officer-

- (a) may, if he forms the opinion that there is no need to further detain the person concerned, order the release of that person; or
- (b) shall, where he forms the opinion that the person is in need of further assessment to determine whether he needs to undergo treatment for mental impairment or a serious mental illness, make an observation order under section 8.

(6) Where a person is under an emergency detention order, treatment may be administered to him without his consent if that is in his best interest.

(7) In this section “emergency detention order” means an order made under subsection (1).

Apprehension of a person suspected to be a danger

7. (1) Where it appears to any constable that any person is, by reason of mental impairment or serious mental illness, an immediate danger, or is likely to become a danger to himself or others, he may take such person into protective custody and with all reasonable despatch but in any case not longer than twelve hours bring him before a government medical doctor registered under the Health Practice Law (2005 Revision).

(2005 Revision)

(2) The medical doctor referred to in subsection (1) shall examine that person, and if he considers that the person should be further detained he shall, within twelve hours of receiving the patient, make an emergency detention order under section 6 after consultation with a medical officer.

Observation order

8. (1) At any time during an emergency detention order or whenever it comes to the attention of a medical officer by information from a nearest relative that any person appears to be in need of assessment to determine whether they need to undergo treatment for mental impairment or a serious mental illness, the medical officer may make an observation order.

(2) An observation order shall allow the person concerned to be detained in a hospital or prescribed place of safety for up to fourteen days to facilitate the assessment of that person.

(3) Before making an observation order, the medical officer may consult with -

- (a) a mental health professional;
- (b) or a social worker employed in that capacity in the government or a statutory authority;
- (c) a probation officer employed in that capacity in the government or a statutory authority; or
- (d) a nearest relative.

(4) A patient who is detained under an observation order may, at any time after the making of the order and up to 7 days after expiry of the observation order, appeal to the Mental Health Commission.

(5) Where a person is under an observation order, treatment may be administered to him without his consent if that is in his best interest.

9. (1) Where a person under an observation order persists in his mental impairment or serious mental illness to an extent calling for further detention or violates an assisted outpatient treatment order, a responsible medical officer may, after consultation with another medical officer, make a treatment order.

Treatment order

(2) A treatment order shall be made for a defined period of time not exceeding six months but may be renewed for as often as necessary until the desired objective is achieved.

(3) The responsible medical officer making or renewing a treatment order shall as soon as practicable inform the Mental Health Commission of the making of the order and any supporting evidence and reasoning relating to the same and the Commission may affirm, revoke or vary the order, or make such other order as it thinks fit.

(4) Where a person is under a treatment order, treatment may be administered to him without his consent if that is in his best interest.

(5) A person detained under a treatment order may, at any time after the making or renewal of the order and up to 30 days after expiry of the order, appeal to the Mental Health Commission.

10. Where a registered nurse in charge is of the view that a voluntary patient is suffering from mental impairment or a serious mental illness and appears likely to leave the hospital premises, the registered nurse in charge may detain such person for a period no longer than six hours so that a formal assessment can be made by a medical doctor.

Temporary holding power

11. Where a medical doctor is of the view that a patient undergoing treatment for mental impairment or a serious mental illness requires urgent treatment for a medical condition but the patient is unable or unwilling to give consent, the medical doctor may, after consultation with the responsible medical officer, administer the minimum necessary treatment to prevent the patient being a danger to himself or others.

Emergency medical treatment order

12. (1) Where, following a period of hospitalization, a patient is unlikely to participate in treatment voluntarily or does not comply with recommended

Assisted outpatient treatment order

treatment, the responsible medical officer may make an assisted outpatient treatment order in relation to that patient.

(2) An assisted outpatient treatment order allows the responsible medical officer to provide treatment, with or without the patient's consent.

(3) An assisted outpatient treatment order shall be made for a fixed time not exceeding one year and may be renewed as often as necessary to achieve its intended objective.

(4) The responsible medical officer shall inform the Mental Health Commission of the making of the order as well as providing the reasoning and evidence relied upon.

(5) If the patient violates an assisted outpatient treatment order, a constable shall take such person into protective custody and with all reasonable despatch bring him before a government medical doctor.

(6) The medical doctor shall examine the person referred to in subsection (5) and if he considers that that person should be further detained he shall direct that he be detained in a hospital or other place of safety able to receive and care for him, there to await the decision of a medical officer who may make an observation order under section 8.

(7) A patient or legal representative of a patient who is dissatisfied with the making of an assisted outpatient treatment order under this section may appeal to the Mental Health Commission and the Commission may affirm, revoke, vary or make such other order as it thinks fit.

Prisoners remanded but unfit to plead

13. Nothing in this Law derogates from the power of the court to deal with remanded prisoners in such manner as it thinks fit.

Treatment outside the Islands

14. (1) Where it is not reasonably practicable to continue treatment in the Islands, the Chief Medical Officer may recommend to the Governor that a patient be transferred to a hospital outside the Islands specialising in the treatment of mental impairment or serious mental illness, there to continue undergoing treatment, subject to the laws of the country in which such hospital is situated, and the Governor may make an order accordingly in the prescribed form.

(2) The Governor may provide for the reception outside the Islands of persons subject to an order made under subsection (1).

15. An order made under this Law is sufficient to the person or persons to whom it is directed to apprehend the person referred to therein and convey him to a hospital or other place as directed in such order and there detain him or cause him to be detained.

Enforcement of orders

16. (1) Postal packets addressed to a patient detained under this Law may be withheld if, in the opinion of a medical officer having care of him, the receipt thereof might have an adverse effect upon him and any such packet so withheld shall be returned to the sender if he can be identified and located.

Postal restrictions

(2) Postal packets addressed by a patient detained under this Law for despatch by the post office may be withheld therefrom -

- (a) if the addressee has given notice in writing to the medical officer requesting that communications addressed to him by the patient should be withheld; or
- (b) it appears to the medical officer that the packet would be unreasonably offensive to the addressee, is defamatory to other persons (other than persons having care of the patient) or would be likely to prejudice the interests of the patient.

(3) Where a postal packet has been withheld under this section, the patient concerned or his near relative may within 7 days after being informed of the decision appeal to the Mental Health Commission.

17. Before making an order under section 20 of the Youth Justice Law (2005 Revision), the Youth Court, if it suspects that the juvenile subject to such order, is suffering from mental impairment or serious mental illness, may order such juvenile to be held in detention for examination by the medical officer who may, after making such examination, detain such juvenile for a period of observation under section 8 and shall in any event report to the Juvenile Court his opinion of the juvenile's mental condition.

Power of Youth Court
(2005 Revision)

18. In the case of -

- (a) a patient under this Law; or
- (b) a person in respect of whom the Grand Court has appointed a guardian under section 14 of the Grand Court Law (2008 Revision) and has thereafter found upon examination to be a person incapable of managing his own affairs,

Jurisdiction of the Grand Court over the property of patients and persons under guardianship
(2008 Revision)

the Grand Court may, with respect to the property and affairs of such person, do or secure the doing of all such things as appear desirable for the maintenance or benefit of such person, of his family, of those for whom he might be expected to provide if he were not suffering from mental impairment or serious mental illness

and for otherwise administering his affairs but shall, in so doing, have regard to the interests of creditors and obligees and to the making of provision for them, notwithstanding that the relevant debts and obligations may not be legally enforceable.

Powers of the Grand Court exercising jurisdiction under section 18

19. In the exercise of its jurisdiction under section 18, the Grand Court may on behalf of a patient or person under guardianship -

- (a) arrange for a person or persons to -
 - (i) manage, sell, acquire, charge or deal with property;
 - (ii) enter into any settlement;
 - (iii) provide for the management of a business;
 - (iv) dissolve a partnership;
 - (v) complete a contract;
 - (vi) conduct legal proceedings; and
 - (vii) act as trustee; or
- (b) appoint a receiver.

Regulations

20. The Governor in Cabinet may make regulations prescribing all matters that are required or permitted by this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law and, in particular -

- (a) declaring a place to be a place of safety;
- (b) prescribing the forms to be used for anything done under this Law; and
- (c) prescribing procedures to be used for anything done under this Law.

Penalties

21. Without prejudice to the operation of any other law, whoever -

- (a) for the purpose of procuring any person to be detained under this Law makes a statement in any form in the truth of which he does not believe; or
- (b) inter-meddles with or deals or offers to deal with any property falsely claiming authority so to do under this Law,

is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year and may be ordered to make restitution of any property involved and missing.

Effects of certain provisions of the Criminal Procedure Code 2011 Revision)

22. Sections 46, 47, 48, 156 and 157 of the Criminal Procedure Code (2011 Revision) are to be read together with this Law as if they formed part thereof but where any provision of that Code is in conflict with any specific provision of this Law the Code shall prevail.

23. The Mental Health Law (1997 Revision) is repealed.

Repeal

Passed by the Legislative Assembly the 25th day of March , 2013.

Mary J. Lawrence

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.