

## CHAPTER 15:12

### MENTAL HEALTH ACT

*Acts 15/1996, 6/2000 22/2001, 23/2004 (s. 4), 5/2014 (s. 33). S.I. 92/1997, S.I. 430B/1999, 262/2007,*

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**AN ACT to consolidate and amend the law relating to the care, detention and after-care of persons who are mentally disordered or intellectually handicapped, whether for the purposes of treatment or otherwise; to provide for the establishment of various boards and the functions of such boards; to repeal the Mental Health Act [*Chapter 15:06*]; and to provide for matters incidental to or connected with the foregoing.**

[Date of commencement: 1 January 2000.]

## PART I

### PRELIMINARY

#### 1 Short title and date of commencement

This Act may be cited as the Mental Health Act [*Chapter 15:12*].

[Short title amended by s.i. 262 of 2007]

#### 2 Interpretation

In this Act—

“Prosecutor-General”, in relation to any function, includes any person to whom the Prosecutor-General has delegated or assigned that function in terms of any law;

[Definition substituted by Act 5 of 2014]

“clinical psychologist” means a person registered as a psychologist under the Psychological Practices Act [*Chapter 27:11*];

“close relative”, in relation to a patient, means any of the following persons—

- (a) the patient’s grandparent, parent, brother, sister, child or grandchild, whether such relationship arises through blood or adoption;
- (b) the patient’s step-grandparent, step-parent, step-brother, step-sister, step-child or step-grandchild;
- (c) where the patient is married, his spouse or his spouse’s grand-parent, parent, brother or sister;

“designated”, in relation to a medical practitioner, psychiatric nurse, social worker or clinical psychologist, means named on a list prepared in terms of section *one hundred and eight*;

“Government medical officer” means a medical practitioner employed wholly or mainly by the State;

“High Court” includes a judge in chambers;

“informal patient” means a person who is received as an informal patient in terms of section *forty-seven*;

“institution” means any mental hospital which the Minister, by notice in the Gazette, has declared to be an institution for the purposes of this Act;

“judge” means a judge of the High Court;

“magistrate”, except in sections *twenty-six*, *twenty-eight*, *twenty-nine* and *thirty-eight*, does not include the chief magistrate or a regional magistrate;

“medical certificate” means a certificate referred to in paragraph (b) of section *five* or paragraph (c) of subsection (2) of section *eleven*;

“medical practitioner” means a person who is registered as a medical practitioner in terms of the Health Professions Act [*Chapter 27:19*];

[Definition amended by Act 6/2000]

“mental hospital” means a hospital, including a hospital that forms part of a prison, for the reception and detention of two or more mentally disordered or intellectually handicapped persons;

“mental hospital board” means a mental hospital board established in terms of section *sixty-eight*;

“mentally disordered or intellectually handicapped”, in relation to any person, means that the person is suffering from mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of the mind;

“Minister” means the Minister of Health and Child Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“patient” means a person—

- (a) who is mentally disordered or intellectually handicapped; or
- (b) concerning whom proceedings under this Act are considered necessary to determine whether or not he is mentally disordered or intellectually handicapped;

“psychiatric nurse” means a person who is registered as a psychiatric nurse in terms of the Health Professions Act [*Chapter 27:19*];

[Definition amended by Act 6/2000]

“psychiatric nurse practitioner” means a person who is registered as a psychiatric nurse practitioner in terms of the Health Professions Act [*Chapter 27:19*];

[Definition amended by Act 6/2000]

“psychopathic disorder” means a persistent disorder or disability of the mind, whether or not subnormality of intelligence is present, which—

- (a) has existed or is believed to have existed in the patient since before he was eighteen years old; and
- (b) results in abnormally aggressive or seriously irresponsible conduct on the part of the patient;

“reception order” means an order issued by a magistrate under section *eight* or *twenty-six* for the removal of a patient to, and his reception and detention in, an institution or in single care;

“Registrar of the High Court” includes an assistant registrar of the High Court;

“Secretary” means the Secretary of the Ministry for which the Minister is responsible;

“single care” means single care as mentioned in subsection (1) of section *ten* or paragraph (b) of subsection (2) or (3) of section *forty-seven*;

“social worker” means—

- (a) a person who is registered as a clinical social worker in terms of the Health Professions Act [*Chapter 27:19*];

[Paragraph amended by Act 6/2000 with effect from the 2nd April, 2001.]

or

- (b) a member of such other class of persons as the Minister, by notice in the *Gazette*, has declared to be social workers for the purposes of this Act;

“special board” means a board established in terms of subsection (1) of section *seventy-three* as a special board, or directed in terms of the proviso to that subsection to be a special board;

“special institution” means a mental hospital or other place which the Minister, with the approval of the Minister responsible for justice, has declared by notice in the *Gazette* to be a special institution for the purposes of this Act;

“superintendent”, in relation to an institution, special institution or other place, means the person in charge of, or the medical superintendent of, that institution, special institution or other place;

“temporary patient” means a person who is received as a temporary patient in terms of section *fifty-three*;

“urgency application” means an application made in terms of section *eleven*.

### **3 Persons not to be received or detained as patients except in accordance with this Act**

No person shall be received or detained as a patient in an institution, special institution or other place except under an order of a magistrate or the High Court or otherwise in accordance with this Act.

## **PART II**

### RECEPTION OF CERTIFIED PATIENTS

#### **4 Application for reception order**

(1) Subject to this Part, an application for a reception order in respect of a person who is believed to be mentally disordered or intellectually handicapped shall be made in the prescribed form by a close relative of the patient or by any other person who has attained the age of eighteen years.

(2) In an application in terms of subsection (1), the applicant shall state—

- (a) that he believes the patient is mentally disordered or intellectually handicapped; and
- (b) the grounds on which he believes the patient is mentally disordered or intellectually handicapped; and

- (c) the degree of consanguinity or affinity in which the applicant is related to the patient and if he is not a close relative, the reason why the application is made by him instead of by a close relative; and
- (d) that the applicant has personally seen the patient within the seven days preceding the day on which the application was signed.

(3) An application in terms of subsection (1) shall be made or sent to the magistrate not more than seven days after the day on which it was signed.

(4) All statements in connection with an application in terms of subsection (1) shall be verified by the affidavit or affirmation of the applicant.

## **5 Magistrate may examine patient and shall obtain medical certificates**

On receipt of an application for a reception order in terms of section *four*, the magistrate—

- (a) may himself examine the patient named in the application; and
- (b) whether or not he examines the patient, shall obtain from two medical practitioners certificates in the prescribed form as to the patient's mental state:

Provided that—

- (i) if only one medical practitioner is available, the magistrate may obtain the second such certificate from a psychiatric nurse practitioner or from a designated psychiatric nurse, social worker or clinical psychologist;
- (ii) at least one of the medical certificates shall be given by a Government medical officer, unless a relative of the patient otherwise requests.

## **6 Magistrate may order apprehension of patient**

A magistrate to whom an application for a reception order has been made in terms of section *four* may, if he thinks fit and if it appears that the patient named in the application will not appear voluntarily, at any time before the reception order has been made, authorize a police officer to apprehend the patient and bring him before the magistrate to be examined and dealt with in accordance with this Part.

## **7 Proceedings to be in private**

All proceedings in relation to a reception order shall be conducted in private:

Provided that, at the request of a close relative of the patient concerned, the proceedings may be conducted in public if the magistrate thinks fit.

## **8 Issue of reception order**

(1) If the magistrate, on consideration of an application for a reception order in terms of section *four* and the medical certificates obtained in terms of section *five*, and after such other inquiry as he thinks fit, is satisfied that the patient concerned is mentally disordered or intellectually handicapped, and—

- (a) is of suicidal tendency or in any way dangerous to himself or to others; or
- (b) has committed or attempted to commit any offence or has acted in a manner offensive to public decency; or
- (c) is excessively dependent on alcohol or illicit drugs; or
- (d) in the case of a psychopathic disorder, requires to be detained; or
- (e) has no fixed abode;

the magistrate may, subject to this Part, issue a reception order in the prescribed form directing that the patient be removed to, and received and detained in, an institution to be named in the order.

(2) No reception order shall be granted in terms of subsection (1) unless each medical certificate—

- (a) shows that the person who issued the certificate has personally examined the patient not more than fourteen days before the date of the reception order; and
- (b) contains the particulars required by section *twenty*, including, in the case of a patient who is believed to be suffering from a psychopathic disorder; the particulars specified in paragraph (i) of that section.

(3) A magistrate shall not issue a reception order on the basis of any medical certificate unless he is satisfied that the facts indicating mental disorder or intellectual handicap specified in the medical report warrant the issue of the reception order.

## **9 Detention under reception order**

(1) After the issue of a reception order the patient shall, subject to section *ten*, be removed to the institution named in the order as soon as possible and, pending such removal, the magistrate may issue such order as he thinks fit for the care, control and detention of the patient at his home or place of abode or elsewhere.

(2) The superintendent of the institution named in a reception order shall receive and detain the patient in his institution upon the patient's being removed thereto in terms of subsection (1).

(3) A reception order shall authorize the detention of the patient named therein for not more than six weeks.

## 10 Detention under reception order of patient in single care

(1) Subject to this section, a magistrate may, in a reception order issued by him, direct that the patient concerned shall be received, treated and detained in single care in a private dwelling-house and not in an institution.

(2) A magistrate shall not issue a direction in terms of subsection (1) unless the persons who issued the relevant medical certificates have certified that it would be safe and convenient for the patient to be received, treated and detained as provided in subsection (1).

(3) Before issuing a direction in terms of subsection (1), the magistrate or a person appointed by him for the purpose shall satisfy himself through personal examination that the householder is a fit and proper person to have charge of the patient and consents thereto and that the dwelling-house, its equipment and its surroundings are suitable for the reception, treatment and detention of the patient.

(4) A patient in single care shall, as often as is prescribed or as may be directed by the Secretary, be visited by a medical practitioner approved by the Secretary:

Provided that the first such visit shall be made within six months after the issue of the direction in terms of subsection (1).

(5) The provisions of this Part relating to the reception, treatment and detention of patients in an institution shall apply, mutatis mutandis, to the reception, treatment and detention of patients in single care.

(6) The provisions of this Act relating to the discharge, escape, transfer or death of patients shall apply to patients in single care.

(7) A magistrate who has issued a reception order with a direction in terms of subsection (1) may, at any time during its continuance, by endorsing the order, authorize the patient to be removed to, and to be received and detained in, a named institution and, within twenty-four hours of such endorsement, shall notify the Prosecutor-General of such removal.

## 11 Urgency applications

(1) In cases of urgency where it is necessary for the welfare of a patient or in the public interest that a patient should forthwith be placed under care, assessment, treatment or control, the person in charge of a suitable place may receive and detain the patient on the authority of an application made in terms of this section.

(2) An urgency application—

(a) shall be made in writing in the prescribed form and shall state—

- (i) that the applicant believes that the patient is mentally disordered or intellectually handicapped; and
- (ii) the grounds on which the applicant believes that the patient is mentally disordered or intellectually handicapped; and
- (iii) the degree of consanguinity or affinity in which the applicant is related to the patient and, if he is not a close relative, the reason why the application is made by him instead of by a close relative; and
- (iv) that the applicant has personally seen the patient within the forty-eight hours preceding the time of application; and
- (v) that the matter is one of urgency; and

(b) shall be signed by the applicant; and

(c) shall be accompanied by a certificate from a medical practitioner or psychiatric nurse practitioner which—

- (i) indicates that the medical practitioner or psychiatric nurse practitioner, as the case may be, has personally examined the patient not more than forty-eight hours before the time of the application; and
- (ii) contains the particulars required by section *twenty*, including, in the case of a patient who is believed to be suffering from a psychopathic disorder, the particulars specified in paragraph (i) of that section.

(3) No person shall sign an urgency application unless he is at least eighteen years of age.

(4) Where a patient has been received into a suitable place on an urgency application, the person in charge of that place shall, within twenty-four hours or, if a Sunday or public holiday intervenes, within twenty-four hours exclusive of the Sunday or public holiday—

(a) notify a magistrate in writing of the patient's admission; and

(b) send the magistrate the urgency application and the accompanying medical certificate.

(5) A magistrate who has been notified in terms of subsection (4) of a patient's admission on an urgency application shall, within fourteen days of the patient's admission or, if an order has been issued under subsection (2) of section *fourteen*, within fourteen days of the date on which the order becomes effective, proceed in the same way as if the application had been made in terms of section *four*.

(6) Where an urgency application has been made and it is necessary for force to be used to remove the patient concerned to a suitable place for care, assessment, treatment or control, the applicant may apply to a magistrate for the issue of an order for the patient's apprehension and his removal to a suitable place for care, assessment treatment and control, and the magistrate may issue such an order if he considers that the circumstances require it.

## **12 Magistrate or designated officer may order apprehension in certain cases**

(1) In this section—

“designated officer” means—

- (a) a provincial administrator, in respect of the province for which he has been appointed; or
- (b) a district administrator or district officer, in respect of the district for which he has been appointed; or
- (c) any other employee of the State or of a local authority who is declared by the Minister, by notice in the Gazette, to be a designated officer in respect of the area specified in the notice.

(2) If information on oath is given to a magistrate that a person is believed to be mentally disordered or intellectually handicapped and is—

- (a) dangerous to himself or others; or
- (b) wandering at large and unable to take care of himself;

the magistrate may by order require a police officer to apprehend the person and bring him before any magistrate with jurisdiction in the area where the person is found.

(3) If a magistrate is not available, an application referred to in subsection (2) may be made to a designated officer for the area in which the person concerned is alleged to be wandering at large, and the designated officer may make an order referred to in that subsection.

(4) A magistrate before whom a patient is brought in terms of subsection (2) shall, if he considers it necessary for the public safety or for the welfare of the patient, issue an order directing the patient's removal to a hospital, prison or other suitable place for examination, and a person in charge thereof shall receive and detain the patient:

Provided that:

- (i) subject to proviso (ii), the patient shall not be removed to, or received in, a prison or a police station he cannot be otherwise controlled and it is impossible to receive him immediately in a hospital or other suitable place which has facilities for his reception;
- (ii) the patient may be removed to, and received in, a prison or police station whilst in the course of being removed to a hospital or other suitable place for examination.

(5) The person in charge of any hospital, prison, police station or other place who has received a patient in terms of subsection (4) shall forthwith obtain the advice of a medical practitioner or psychiatric nurse practitioner and, as soon as possible thereafter—

- (a) make an application in terms of section *four* for a reception order or an urgency application in terms of section *eleven* in respect of that patient; or
- (b) cause an application to be made in terms of section *fifty-three* for the reception and treatment of that patient as a temporary patient in terms of Part VII:

Provided that this subsection shall not apply to the person in charge of a prison or a police station who has received a patient in terms of proviso (ii) to subsection (4).

(6) A patient shall not be detained under an order issued in terms of subsection (4) for more than fourteen days from the date the order was issued, unless a magistrate has ordered the patient's further detention in terms of subsection (7).

(7) A magistrate may issue an order directing a patient's further detention for not more than fourteen days after the expiry of the period referred to in subsection (6), if the medical practitioner or psychiatric nurse practitioner responsible for examining the patient applies for such an order and the magistrate is satisfied that it will be in the patient's best interests to issue it.

## **13 Powers and duties of police officers in regard to certain patients**

(1) Subject to subsection (2), if a police officer has reason to believe that any person is mentally disordered or intellectually handicapped and—

- (a) is not under safe and proper care, treatment or control; or
- (b) is neglected or cruelly treated by any person having the care or charge of him; or
- (c) is of suicidal tendency or in any way dangerous to himself or to others; or
- (d) acts in a manner offensive to public decency;

the police officer shall forthwith either apply in terms of section *four* for a reception order in respect of that patient or cause such an application to be made.

(2) If a police officer believes that—

- (a) a person is apparently mentally disordered or intellectually handicapped and is—
  - (i) dangerous to himself or to others; or

(ii) wandering at large and unable to take care of himself;

and

(b) it is necessary for the public safety or for the welfare of the patient that before other proceedings are taken under this Act the patient should forthwith be placed under care and control;

he may, without warrant or order, apprehend and convey the patient to a hospital, prison or other suitable place for examination, and the person in charge of that hospital, prison or place shall receive and detain the patient:

Provided that—

(i) subject to proviso (ii), the patient shall not be removed to, or received in, a prison or a police station unless he cannot be otherwise controlled and it is impossible to receive him immediately in a hospital or other suitable place which has facilities for his reception;

(ii) the patient may be removed to, and received in, a prison or a police station whilst in the course of being removed to a hospital or other suitable place for examination.

(3) Subject to subsection (5), the person in charge of any hospital, prison, police station or other place who has received a patient in terms of subsection (2) shall—

(a) forthwith obtain the advice of a medical practitioner or psychiatric nurse practitioner and, as soon as possible thereafter, make an application in terms of section *four* for a reception order or an urgency application in terms of section *eleven* in respect of that patient;

(b) whether or not he has received the advice of a medical practitioner or a psychiatric nurse practitioner, within twenty-four hours of the patient's admission or, if a Sunday or public holiday intervenes, within twenty-four hours exclusive of the Sunday or public holiday, notify a magistrate in writing of the patient's admission:

Provided that this subsection shall not apply in relation to the person in charge of a prison or a police station who has received a patient in terms of proviso (ii) to subsection (2).

(4) On receipt of a notification in terms of paragraph (b) of subsection (3), the magistrate may issue an order for the further detention of the patient and, in making such an order, the magistrate may order the patient's removal to any other hospital, prison, police station or other suitable place for examination, and the person in charge of that hospital, prison, police station or place shall receive and detain the patient therein:

Provided that a patient shall not be detained under an order issued in terms of this subsection for more than fourteen days from the date the order was issued unless a magistrate has ordered the patient's further detention in terms of subsection (5).

(5) A magistrate may issue an order directing a patient's further detention for not more than fourteen days after the expiry of the period referred in the proviso to subsection (4), if the medical practitioner or psychiatric nurse practitioner responsible for examining the patient applies for such an order and the magistrate is satisfied that it will be in the patient's best interests to issue it.

(6) Where a magistrate has, in terms of subsection (4), ordered a patient to be removed to, and detained in another place, paragraph (a) of subsection (3) shall cease to apply to the person in charge of the hospital, prison, police station or other place from which the patient has been removed.

#### **14 Period of detention in urgency cases**

(1) No person shall be detained under an urgency application for more than fourteen days, unless a magistrate has ordered the patient's further detention in terms of subsection (2).

(2) A magistrate may issue an order directing a patient's further detention for not more than fourteen days after the expiry of the period referred to in subsection (1), if the medical practitioner or psychiatric nurse practitioner responsible for examining the patient in the place where the patient is detained applies for such an order and the magistrate is satisfied that it will be in the patient's best interests to issue it.

#### **15 Release of patient**

If, on inquiry, a magistrate refuses to issue a reception order in respect of a patient detained under section *eleven*, *twelve* or *thirteen*, he shall—

(a) forthwith give notice of his refusal to the person in charge of the place where the patient is detained and, after that person has received the notice, it shall not be lawful to continue to detain the patient; and

(b) take all necessary steps to return the former patient to the place from which he was brought, and any expenses incurred therein shall be paid from moneys appropriated for the purpose by Act of Parliament.

#### **16 Prosecutor-General ex officio curator ad litem of patients**

(1) Subject to subsection (3), the Prosecutor-General shall be the official curator ad litem of a person who is detained—

(a) under an order granted by a magistrate or the High Court under this Act; or

(b) as a temporary patient or in terms of Part VIII.

(2) The High Court may, at the request of the Prosecutor-General—

(a) appoint a curator of the person for any person referred to in subsection (1), either generally or for a specific purpose;

(b) revoke any appointment made in terms of paragraph (a).

(3) In addition to his powers as curator ad litem, the Prosecutor-General may exercise, in relation to a person referred to in subsection (1), any powers that could be exercised by a curator of the person:

Provided that where the High Court has, in terms of subsection (2) or otherwise, appointed a curator of the person, the Prosecutor-General may not exercise any powers that are exercisable by that curator of the person.

#### **17 Orders and reports to be submitted to Prosecutor-General and Registrar or High Court**

(1) A magistrate who issues a reception order shall without delay send a copy of it, together with copies of the depositions, if any, and medical certificates or reports upon which he acted in issuing the reception order and his own report, to the Prosecutor-General.

(2) Where a patient is being detained on the authority of a reception order in a place other than an institution, the magistrate shall, within ten days after issuing the reception order, send the Prosecutor-General a report which—

(a) has been made by a medical practitioner or psychiatric nurse practitioner who has been in attendance on the patient; and

(b) describes the patient's mental state during the period of his detention since the issue of the reception order; and

(c) is based upon an examination of the patient made not less than two or more than ten days after the date of the reception order.

(3) The magistrate shall provide the Prosecutor-General with such additional reports, if any, as may be prescribed and shall comply with any other requirements that are prescribed.

(4) Where a patient has been received in an institution on the authority of a reception order, the superintendent of the institution shall, within ten days after the patient's reception, send the Prosecutor-General a report which—

(a) has been made by a medical practitioner or psychiatric nurse practitioner who has been in attendance on the patient; and

(b) describes the patient's mental state during the period of his detention since the issue of the reception order; and

(c) is based upon an examination of the patient made not less than two or more than ten days after the date of his admission.

(5) On receiving from a magistrate any order, deposition or report in terms of this section, the Prosecutor-General shall forthwith examine it and, if he considers it necessary, may require further depositions, statements and reports to be furnished.

(6) As soon as possible after examining any order, deposition and report in terms of subsection (5) and before the date of expiry of the reception order, the Prosecutor-General shall, unless the person to whom the order relates has already been discharged under this Act, send the order and all the depositions, statements and reports to the Registrar of the High Court for consideration by a judge in chambers.

#### **18 Powers of judge on consideration of reception order and documents**

(1) Upon consideration of an order and any depositions, statements and reports submitted in terms of section *seventeen*, a judge may do any of the following—

(a) if satisfied that an order for the patient's further detention should be made forthwith, make such an order, either for a definite or an indefinite period, as he considers necessary;

(b) direct that a summons or notice be served upon the patient and the Prosecutor-General, calling on them to appear and show cause why the patient should not be declared to be mentally disordered or intellectually handicapped and his detention as such confirmed;

(c) appoint or authorize the appointment of a curator, either for the care of the patient's person or for the care and administration of his property or for both such purposes;

(d) direct a social worker or other suitable person to investigate and report on the patient's probable economic, social, physical and other circumstances if he is discharged;

(e) direct the patient's discharge if his discharge seems justified in the light of evidence as to his physical and mental health and his probable economic, social, physical and other circumstances following such discharge;

(f) direct that any summons, notice or other process be issued and the proceedings in the case be continued free of any stamp duty or fee of office, and order that service of any process under this section be made in such manner as seems expedient;

and generally give such directions as he considers necessary and proper.

(2) Notwithstanding that it appears to the judge that any requirement of this Act has not been fully complied with, he may make an order or give a direction under subsection (1) if, in his opinion, the non-compliance is immaterial and has not caused prejudice to any person.

(3) The Registrar of the High Court shall send three copies of any order made or direction given by a judge under subsection (1) to the Prosecutor-General, who shall send one copy to the person who has custody of the patient and one to the Secretary.

### **19 Secretary may order patient's removal to institution or other place**

(1) The Secretary may, at any time after—

- (a) a magistrate has issued a reception order for the detention of a mentally disordered or intellectually handicapped person; or
- (b) the High Court has declared a person to be mentally disordered or intellectually handicapped;

by warrant, order the removal of the patient from the institution or place where he is detained to another institution or place, there to be detained until discharged under this Act or transferred to some other place, and the patient shall be so removed and detained in accordance with the terms of the warrant:

Provided that the Secretary shall not order such a patient to be transferred to a prison or a special institution.

(2) Where the Secretary issues a warrant in terms of subsection (1) in respect of a person referred to in paragraph (a) of that subsection before the High Court has declared him to be mentally disordered or intellectually handicapped, the Secretary shall cause notice of the warrant to be sent to the Prosecutor-General.

### **20 Particulars to be contained in medical certificates**

A person who gives a medical certificate shall, in addition to the facts indicating mental disorder or intellectual handicap which he observed in the patient immediately before giving the certificate, state in the certificate, so far as he is able—

- (a) any further facts indicative of mental disorder or intellectual handicap in the patient which he observed on any other occasion, and the date of that occasion; and
- (b) any facts communicated to him by others which indicate mental disorder or intellectual handicap in the patient, and the names and addresses of the persons who communicated those facts; and
- (c) what, in his opinion, are the factors which have caused the patient's mental disorder or intellectual handicap; and
- (d) whether, in his opinion, the patient is suicidal or in any way dangerous to himself or to others; and
- (e) what treatment, if any, the patient has received in respect of his mental condition; and
- (f) what is the patient's physical health and condition, with special reference to the presence or absence of any communicable disease and any recent injury; and
- (g) the reasons why he considers it necessary, in the interests of the patient's health and safety or for the protection of other persons, that the patient should be detained in an institution; and
- (h) whether other methods of dealing with the patient are available and, if so, why they are not appropriate; and
- (i) in the case of a patient whom he believes to be suffering from a psychopathic disorder—
  - (i) the patient's conduct or behaviour which causes him to believe that the patient is suffering from a psychopathic disorder; and
  - (ii) the sources from which he has gained his knowledge of the patient's conduct or behaviour; and
  - (iii) if the patient has attained the age of eighteen years, the grounds on which it is believed that the disorder or mental handicap has existed in the patient since before he was eighteen years old.

### **21 Persons ineligible to sign medical certificates**

(1) Except in the case of an urgency application, a magistrate shall not accept a medical certificate for the purposes of this Part if it has been signed by—

- (a) the applicant for a reception order; or
- (b) a medical or other officer of any private institution into which the reception order, if issued, would authorize the patient to be received; or
- (c) the householder of any dwelling-house into which the reception order, if issued, would authorize the patient to be received as a patient in single care; or
- (d) any person who has an interest in any payments to be received on account of the patient; or
- (e) a close relative, partner, principal or assistant of the patient or the guardian or trustee of the patient or of any other person mentioned in paragraph (a), (b), (c) or (d); or
- (f) the Secretary or a member of the Mental Health Review Tribunal, a mental hospital board or a special board.

(2) A medical certificate shall not be accepted under this Part if it has been signed by a close relative, partner, principal or assistant of any other medical practitioner or other person who has given a medical certificate in respect of the same application.

(3) A medical certificate shall contain a statement from the medical practitioner or other person signing it—

- (a) that he is not prohibited by this Act from signing the certificate; and

(b) where appropriate, that he is registered under the Health Professions Act [*Chapter 27:19*].

[Paragraph amended by Act 6/2000 with effect from the 2nd April, 2001.]

## 22 Periodical reports on patients

(1) The superintendent of an institution or other place in which a patient is detained shall send to the Secretary—

- (a) for the first three years, annually; and
- (b) subsequently, every three years;

a report in the prescribed form as to the patient's mental and physical condition:

Provided that, in the case of a patient who had not attained the age of sixteen years when the reception order relating to him was issued, a special report as to his mental and physical condition shall be sent within three months after he attains the age of sixteen years.

(2) A report in terms of subsection (1) shall be sent in the year concerned in the month corresponding to that in which the patient was admitted to the institution or other place.

(3) If the Secretary is not satisfied with a report sent in terms of subsection (1) he may—

- (a) call for such further information as he thinks fit; or
- (b) himself visit and examine the patient to ascertain his mental and physical condition; or
- (c) instruct a medical practitioner appointed by him for the purpose to examine the patient and report on his mental and physical condition.

(4) After making any visit or considering any information or report received in terms of subsection (3), the Secretary may order the discharge of the patient or give such other directions as he thinks fit in relation to the care, treatment or custody of the patient:

Provided that a patient detained under Part III or IV shall not be discharged except as permitted in terms of the Part concerned.

## 23 Amendment of applications, orders and certificates

(1) If an application for a reception order or a reception order is found, whether before the reception of the patient or within one month thereafter, to be incorrect or deficient in any respect, any magistrate may permit the application to be amended or, as the case may be, may amend the reception order.

(2) If a medical certificate is found, whether before the reception of the patient or within one month thereafter, to be incorrect or deficient in any respect not relating to the mental state of the patient, the medical practitioner or other person who gave the certificate may amend it, with the consent of a magistrate.

(3) A reception order or medical certificate which has been amended in terms of subsection (1) or (2) shall have effect as if the amendment had been contained in it when the order or certificate was originally issued or signed, as the case may be.

## 24 Power of superintendent to discharge patients

(1) Notwithstanding any other provision of this Act and without derogation from the powers of a mental hospital board under section *seventy-two*, a superintendent may discharge from his institution or other place any person lawfully detained under this Act, if he is satisfied that the person is not mentally disordered or intellectually handicapped or no longer requires detention in the institution or other place, as the case may be:

Provided that a patient detained under Part III or IV shall not be discharged except as permitted in terms of the Part concerned.

(2) If a superintendent discharges any patient in terms of subsection (1), he shall—

- (a) forthwith notify a magistrate, in writing, of the patient's discharge; and
- (b) in the case of an informal patient, notify the Secretary in terms of section *forty-three*.

(3) A superintendent may at any time refer to a mental hospital board for inquiry and consideration in terms of section *seventy-two* the case of any patient detained in his institution or other place.

## 25 Appeal to Mental Health Review Tribunal

(1) Subject to this section, an appeal shall lie to the Mental Health Review Tribunal against the continued detention of a patient who is detained in an institution or other place in terms of this Part.

(2) An appeal in terms of subsection (1) may be made—

- (a) by the patient concerned; or
- (b) by the patient's guardian; or
- (c) if the patient is not a minor, by his curator, spouse, close relative or friend who is not a minor.

(3) Except with the consent of the Mental Health Review Tribunal, not more than one appeal in respect of any patient shall be heard by the Tribunal in each year following the patient's admission to the institution or other place.

(4) Section *eighty-one* shall apply to the noting of an appeal in terms of subsection (1), the procedure to be followed, and the Mental Health Review Tribunal's powers on such an appeal.

## PART III

### PROVISIONS RELATING TO MENTALLY DISORDERED OR INTELLECTUALLY HANDICAPPED PERSONS IN CUSTODY

#### **26 Power of magistrate to order examination and treatment of accused persons**

(1) In this section—

“magistrate” includes the chief magistrate and any regional magistrate.

(2) Without derogation from section *twenty-seven* or *twenty-eight*, if a person appears before a magistrate for the purpose of—

- (a) remand; or
- (b) any other purpose prior to arraignment;

on a charge of committing an offence which the magistrate considers will not merit imprisonment without the option of a fine or a fine exceeding level three, and the magistrate has reason to believe that the person is mentally disordered or intellectually handicapped, the magistrate may order that the proceedings against the person be stayed for a definite or an indefinite period, and may—

- (i) order the person to submit himself for examination and additionally, or alternatively, treatment in any institution or other place in terms of Part VI; or
- (ii) order the person’s guardian, spouse or close relative to make an application for the person to be received for examination and additionally, or alternatively, treatment in any institution or place in terms of Part VII or Part VIII; or
- (iii) order two medical practitioners to examine the person and inquire into and report on his mental state:

Provided that, if only one medical practitioner is available, the magistrate may order a psychiatric nurse practitioner or a designated psychiatric nurse, social worker or clinical psychologist to examine the person concerned and inquire into and report on his mental state;

and may give such directions for the person’s release from custody or continued detention or transfer to an institution or other place as he considers necessary to ensure that the person’s mental state is examined and additionally, or alternatively, that he receives appropriate treatment.

(3) An order or direction under subsection (2) may be given subject to such conditions as the magistrate think fit.

(4) If the magistrate, after considering medical reports given pursuant to an order under subsection (2) and such other evidence as he thinks fit, finds that the person concerned is mentally disordered or intellectually handicapped and—

- (a) is of suicidal tendency or in any way dangerous to himself or to others; or
- (b) has committed or attempted to commit any offence or has acted in a manner offensive to public decency; or
- (c) is excessively dependent on alcohol or illicit drugs; or
- (d) in the case of a psychopathic disorder, requires to be detained; or
- (e) has no fixed abode;

the magistrate may issue a reception order in the prescribed form directing that the person—

- (i) be removed to, and received and detained in, an institution to be named in the order; or
- (ii) subject to section *ten*, be received, treated and detained in single in a private dwelling-house and not in an institution;

and the procedure laid down in Part II shall thereafter be followed.

(5) Notwithstanding any other law, but subject to the terms and conditions of the order concerned, where a magistrate has ordered in terms of subsection (2) that proceedings against a person be stayed, no further proceedings shall be taken against that person in relation to the offence in connection with which he appeared before the magistrate until—

- (a) the period, if any, specified in the order has expired; or
- (b) any examination or treatment ordered to be undergone by that person has been completed; or
- (c) the magistrate, or another magistrate of equivalent jurisdiction, revokes the order; or
- (d) the order is set aside by the Mental Health Review Tribunal on an appeal in terms of section *thirty-six*.

#### **27 Procedure where person found mentally disordered or intellectually handicapped while under detention**

(1) If it appears to the Prosecutor-General or to the person in charge of a prison or other place where a person is being detained—

- (a) for the purposes of a preparatory examination, trial or sentence for any offence; or
- (b) in terms of any enactment for purposes other than those specified in paragraph (a) and is not a convicted prisoner;

that the person in detention is mentally disordered or intellectually handicapped, the Prosecutor-General or the person so in charge, as the case may be, shall without delay report the fact to a magistrate of the province in which the person concerned is being detained:

Provided that, if the person is under detention for the purposes of a preparatory examination or trial which has already commenced, the report required by this subsection shall be made to the judicial officer presiding at the preparatory examination or trial, and that judicial officer shall then proceed under section *twenty-eight*.

(2) Within twenty-four hours after receiving a report in terms of subsection (1), the magistrate or other judicial officer shall direct two medical practitioners to examine the person concerned and to inquire into his mental state, and after such examination the medical practitioners shall certify in writing in the prescribed form as to the person's mental state:

Provided that, if only one medical practitioner is available, the magistrate or judicial officer may direct a psychiatric nurse practitioner to examine the person concerned, inquire into his mental state and provide the second certificate required by this subsection.

(3) If the magistrate or other judicial officer, on consideration of the certificates provided in terms of subsection (2) and after such other inquiry as he thinks fit—

(a) is satisfied that the person concerned is mentally disordered or intellectually handicapped and, in the case of a person referred to in paragraph (a) of subsection (1), would not be able to understand the nature of any criminal proceedings or properly to conduct his defence, he shall issue one of the following orders—

- (i) order that the person be removed to, and detained in an institution; or
- (ii) if it appears to him from the medical or other evidence that the person is a danger to others and a certificate in terms of subsection (2) which has been given by a designated medical practitioner recommends that the person be detained in a special institution, order that the person be removed to, and detained in, a special institution; or
- (iii) if the magistrate or judicial officer considers that the offence in respect of which the person is undergoing a preparatory examination or with which he is charged or of which he has been convicted, as the case may be, will not merit imprisonment without the option of a fine or a fine exceeding level three, order the proceedings against the person to be stayed for a definite or indefinite period, and—
  - A. order the person to submit himself for treatment in any institution or other place in terms of Part VI; or
  - B. order the person's guardian, spouse or close relative to make an application for the person to be received for treatment in any institution or place in terms of Part VII or Part VIII;

and give such directions for the person's release from custody or continued detention or transfer to an institution or other place as he considers necessary to ensure that the person receives appropriate treatment;

(b) is unable to conclude whether or not the person concerned is mentally disordered or intellectually handicapped or whether, in the case of a person referred to in paragraph (a) of subsection (2), he would be able to understand the nature of any criminal proceedings or properly to conduct his defence, the magistrate or judicial officer may issue an order—

- (i) directing that the person be removed to an institution and detained there for examination:
  - Provided that a person shall not be detained in terms of this subparagraph for more than eight weeks; or
- (ii) directing the release of the person, for such period and subject to such conditions as may be specified in the order, for the purpose of examination of his mental state.

(4) An order issued under subparagraph (i) or (ii) of paragraph (a) of subsection (3) shall have the same effect as a reception order and the procedure laid down in Part II shall thereafter be followed.

(5) An order or direction under subparagraph (iii) of paragraph (a) of subsection (3) may be given subject to such conditions as the magistrate or other judicial officer thinks fit.

(6) Notwithstanding any other law, but subject to the terms and conditions of the order concerned, where a magistrate or other judicial officer has ordered in terms of subsection (3) that proceedings against a person be stayed, no further proceedings shall be taken against that person in relation to the offence in connection with which he appeared before the magistrate or other judicial officer until—

- (a) the period, if any, specified in the order has expired; or
- (b) any examination or treatment ordered to be undergone by that person has been completed; or
- (c) the magistrate or judicial officer, or another magistrate or judicial officer of equivalent jurisdiction, revokes the order; or
- (d) the order is set aside by the Mental Health Review Tribunal on an appeal in terms of section *thirty-six*.

(7) A person who is detained under an order issued in terms of paragraph (b) of subsection (3) shall, whilst so detained, be deemed to be in the lawful custody of the person in charge of the place in which he was detained before his removal to the institution.

## **28 Procedure where person found mentally disordered or intellectually handicapped during preparatory examination or trial**

(1) In this section—

“magistrate” includes the chief magistrate and any regional magistrate.

(2) If, at any time during a preparatory examination against, or trial of, any person—

(a) it appears to the judge or magistrate presiding at the preparatory examination or trial that the person is mentally disordered or intellectually handicapped; or

(b) a report in terms of the proviso to subsection (1) of section *twenty-seven* is received by the judge or magistrate presiding at the preparatory examination or trial that the person appears to be mentally disordered or intellectually handicapped;

the judge or magistrate shall inquire into that person’s mental state.

(3) For the purposes of inquiring into a person’s mental state in terms of subsection (2), the judge or magistrate may—

(a) adjourn the preparatory examination or trial for such period, not exceeding fourteen days, as he thinks fit and remand the person to the custody of the officer in charge of a prison; and

(b) direct two medical practitioners to examine the person and inquire into his mental state and, after such examination, the medical practitioners shall certify in writing in the prescribed form as to the person’s mental state:

Provided that if only one medical practitioner is available, the judge or magistrate may direct a psychiatric nurse practitioner to examine the person concerned, inquire into his mental state and provide the second certificate required by this paragraph.

(4) If the judge or magistrate, on consideration of the medical evidence and such other evidence as he thinks fit, finds that the person concerned is mentally disordered or intellectually handicapped and would not be able to understand the nature of any criminal proceedings or properly to conduct his defence, he shall record that finding and issue one of the following orders—

(a) in the case of a judge—

(i) order that the person be removed to an institution and detained there for a definite or an indefinite period; or

(ii) if it appears to him from the medical or other evidence that the person is a danger to others and a certificate in terms of subsection (3) which has been given by a designated medical practitioner recommends that the person be detained in a special institution, order that the person be removed to a special institution and detained there for a definite or an indefinite period; or

(iii) if the judge considers that the offence with which the person is charged will not merit imprisonment without the option of a fine or a fine exceeding level three, order the proceedings against the person to be stayed for a definite or an indefinite period, and—

A. order the person to submit himself for treatment in any institution or other place in terms of Part VI; or

B. order the person’s guardian, spouse or close relative to make an application for the person to be received for treatment in any institution or place in terms of Part VII or Part VIII;

and give such directions for the person’s release from custody or continued detention or transfer to an institution or other place as he considers necessary to ensure that the person receives appropriate treatment;

(b) in the case of a magistrate—

(i) order that the person be removed to, and detained in, an institution; or

(ii) if it appears to him from the medical or other evidence that the person is a danger to others and a certificate in terms of subsection (3) which has been given by a designated medical practitioner recommends that the person be detained in a special institution, order that the person be removed to, and detained in, a special institution; or

(iii) if the magistrate considers that the offence in respect of which the person is undergoing a preparatory examination or with which he is charged, as the case may be, will not merit imprisonment without the option of a fine or a fine exceeding level three, order the proceedings against the person to be stayed for a definite or an indefinite period, and—

A. order the person to submit himself for treatment in any institution or other place in terms of Part VI; or

B. order the person’s guardian, spouse or close relative to make an application for the person to be received for treatment in any institution or place in terms of Part VII or Part VIII;

and give such directions for the person's release from custody or continued detention or transfer to an institution or other place as he considers necessary to ensure that the person receives appropriate treatment.

(5) An order made—

(a) by a judge under subparagraph (i) or (ii) of paragraph (a) of subsection (4) may include provision for any matter referred to in paragraph (c) of subsection (1) of section *eighteen* and shall have the same effect as an order made under that subsection;

(b) by a magistrate under subparagraph (i) or (ii) of paragraph (b) of subsection (4) shall have the same effect as a reception order, and the procedure laid down in Part II shall thereafter be followed.

(6) An order or direction under subparagraph (iii) of paragraph (a) or (b) of subsection (4) may be given subject to such conditions as the judge or magistrate, as the case may be, thinks fit.

(7) Notwithstanding any other law, but subject to the terms and conditions of the order concerned, where a judge or magistrate has ordered in terms of subsection (4) that proceedings against a person be stayed, no further proceedings shall be taken against that person in relation to the offence in connection with which he appeared before the judge or magistrate, as the case may be, until—

(a) the period, if any, specified in the order has expired; or

(b) any examination or treatment ordered to be undergone by that person has been completed; or

(c) a judge revokes the order; or

(d) in the case of an order made by a magistrate, that magistrate, or another magistrate of equivalent jurisdiction, revokes the order; or

(e) the order is set aside by the Mental Health Review Tribunal on an appeal in terms of section *thirty-six*.

(8) The Registrar of the High Court shall send a copy of any order made by a judge in terms of paragraph (a) of subsection (4) to a magistrate of the province in which the patient was residing immediately before he was detained in custody for the purposes of his preparatory examination or trial or for examination in terms of this section, as the case may be.

(9) If the judge or magistrate is unable to conclude whether or not the person concerned is mentally disordered or intellectually handicapped or whether he would be able to understand the nature of any criminal proceedings or properly to conduct his defence, the judge or magistrate may issue an order—

(a) directing that the person be removed to an institution and detained there for examination:

Provided that a person shall not be detained in terms of this subparagraph for more than eight weeks; or

(b) directing the release of the patient, for examination such period and subject to such conditions as may be specified in the order, for the purpose of examination of his mental state.

(10) A person who is detained in terms of subsection (9) shall be deemed, whilst so detained, to be in the lawful custody of the officer in charge of the prison in which he was detained before his removal to the institution.

(11) Notwithstanding anything to the contrary contained in the law relating to criminal procedure, where any person is found in terms of subsection (4) to be mentally disordered or intellectually handicapped and, prior to the finding, he has been called upon to plead to the indictment, summons or charge, he shall not be entitled to demand that he be either acquitted or convicted.

## **29 Procedure where person charged is found mentally disordered or intellectually handicapped at time of committing offence**

(1) In this section—

“act” includes an omission;

“magistrate” includes the chief magistrate and any regional magistrate.

(2) If a judge or magistrate presiding over a criminal trial is satisfied from evidence, including medical evidence, given at the trial that the accused person did the act constituting the offence charged or any other offence of which he may be convicted on the charge, but that when he did the act he was mentally disordered or intellectually handicapped so as to have a complete defence in terms of section 248 of the Criminal Law Code, the judge or magistrate shall return a special verdict to the effect that the accused person is not guilty because of insanity, and may—

(a) order the accused person to be returned to prison for transfer to an institution or special institution for examination as to his mental state or for treatment; or

(b) if the judge or magistrate considers that, had the accused person been convicted of the offence concerned, he would not have been sentenced to imprisonment without the option of a fine or to a fine exceeding level three, order—

(i) the accused person to submit himself for examination and additionally, or alternatively, treatment in any institution or other place in terms of Part VI; or

(ii) the accused person's guardian, spouse or close relative to make an application for the person to be received for examination and additionally, or alternatively, treatment in any institution or place in terms of Part VII or Part VIII;

and may give such orders as may be appropriate for the accused person's release from custody for the purpose of such examination or treatment; or

- (c) if the judge or magistrate is satisfied that the accused person is no longer mentally disordered or intellectually handicapped or is otherwise fit to be discharged, order his discharge and, where appropriate, his release from custody.

[Subsection amended by Act 23 of 2004]

(3) Certified copies of an order referred to in paragraph (a) of subsection (2) shall forthwith be sent by the registrar or clerk of the court concerned to—

- (a) a magistrate of the province in which the accused person was residing immediately before he was detained in custody for the purposes of his trial or in terms of subsection (2), as the case may be; and
- (b) the officer in charge of the prison to which the accused person has been returned; and
- (c) the superintendent of the institution to which the accused person is to be transferred under the authority of that order.

(4) Within fourteen days after a patient has been received into an institution or special institution pursuant to an order under paragraph (a) of subsection (2), the superintendent of the institution or special institution shall issue a certificate in the prescribed form as to the patient's mental state and shall send the certificate to a special board with a copy to the Prosecutor-General.

(5) Upon receipt of a certificate sent to it in terms of subsection (4), and after making such inquiry as it thinks necessary, the special board shall make recommendations as to the patient's release or his further detention, care, management and treatment, and shall send the recommendations to the Mental Health Review Tribunal with a copy to the Attorney General.

(6) The Mental Health Review Tribunal, after considering any recommendations sent to it in terms of subsection (5), may give such directions as it thinks fit regarding the release, detention, care, management and treatment of the patient concerned.

(7) Pending the decision of the Mental Health Review Tribunal under subsection (6), the superintendent of the institution or special institution in which the patient concerned is detained may, by warrant in the prescribed form addressed to the officer in charge of a prison, direct that the patient be detained in that prison.

(8) Subject to section *thirty-four* and to any directions given by the Mental Health Review Tribunal in terms of subsection (6), a patient detained in terms of this section may be moved from any institution or other place to any other institution or place by the Secretary if, in the Secretary's opinion, it is desirable for the patient's care, treatment or control that he be so moved.

(9) Where a magistrate returns a special verdict in terms of subsection (2), the verdict shall be subject to review by a judge, and subsections (1) and (4) of section 57 of the Magistrates Court Act [*Chapter 7:10*] and section 29 of the High Act [*Chapter 7:06*], shall apply, mutatis mutandis, in relation to the proceedings concerned.

(10) A special verdict in terms of subsection (1) shall be regarded as a conviction for the purposes of any appeal or reservation of a question of law, and sections 34 to 41 and 44 of the High Court Act [*Chapter 7:06*] and sections 9 to 19 of the Supreme Court Act [*Chapter 7:13*] shall apply, mutatis mutandis, in relation to the proceedings concerned:

Provided that, for all other purposes, a special verdict shall be regarded as an acquittal.

### **30 Procedure where convicted prisoner found to be mentally disordered or intellectually handicapped**

(1) Whenever it appears to the officer in charge of a prison that a convicted prisoner in his charge is mentally disordered or intellectually handicapped, he shall forthwith report the fact to the nearest magistrate.

(2) Within twenty-four hours after receiving a report in terms of subsection (1), the magistrate shall direct two medical practitioners, one of whom shall, if practicable, be the medical officer of the prison, to examine the prisoner concerned and to inquire into his mental state, and after such examination each medical practitioner shall certify, in writing in the prescribed form, as to the prisoner's mental state:

Provided that, except in the case of a prisoner who is under sentence of death, if two medical practitioners are not available the magistrate may direct a psychiatric nurse practitioner to examine the prisoner, inquire into his mental state and give the second certificate required by this subsection.

(3) Subject to subsection (4), if the magistrate, on consideration of the certificates provided in terms of subsection (2) and after such other inquiry as he thinks fit, is satisfied that the prisoner is mentally disordered or intellectually handicapped, he shall—

- (a) issue an order directing that the prisoner be removed to, and detained in, an institution; or
- (b) if it appears to him that the prisoner is a danger to others and a certificate in terms of subsection (2) which has been given by a designated medical practitioner recommends that the prisoner be detained in a special institution, issue an order directing that the prisoner be removed to, and detained in a special institution.

(4) In the case of a prisoner under sentence of death, the magistrate shall, on receipt of the medical certificates in terms of subsection (2), whether they are to the effect that the prisoner is mentally disordered or intellectually handicapped or not, forthwith transmit them, together with his own report, to the Minister responsible for justice, who shall thereupon ascertain the decision of the President as to the disposal of the prisoner.

(5) An order issued under subsection (3) shall have the same effect as a reception order, and the procedure laid down in Part II shall thereafter be followed.

(6) An order issued under subsection (3) and any order of a judge for the further detention of a prisoner in an institution shall have the effect of suspending the warrant under which the prisoner is detained in prison.

### **31 Prosecutor-General to be informed before discharge of certain patients**

(1) A patient who is detained under an order issued in terms of section *twenty-seven* or *twenty-eight* shall not be discharged from the institution, special institution or other place in which he is detained unless the superintendent of the institution, special institution or other place has given the Prosecutor-General at least fourteen days' notice of the proposed discharge and informed the Prosecutor-General, in writing, whether or not the patient is able to understand the nature of criminal proceedings and properly to conduct his defence therein:

Provided that this subsection shall not apply—

- (a) if the Prosecutor-General has informed the superintendent of the institution, special institution or other place that he has decided not to proceed with the prosecution of the patient; or
- (b) where the patient is being transferred to another institution, special institution or other place for further examination or treatment.

(2) On receipt of notice of a patient's discharge given in terms of subsection (1), the Prosecutor-General may, if he decides to proceed with the prosecution of the patient, issue a warrant for the patient's removal to a prison, and the patient shall be removed to and detained in the prison on the authority of that warrant.

### **32 Power of Prosecutor-General to withdraw charges**

(1) Notwithstanding anything to the contrary in this Part and without derogation from the Prosecutor-General's powers under any other law, if it appears to the Prosecutor-General that any person—

- (a) against whom criminal charges are pending; or
- (b) who is being tried for an offence but who has not yet been convicted;

is mentally disordered or intellectually handicapped or was so disordered or handicapped when he allegedly committed the offence, the Prosecutor-General may decline to prosecute him or withdraw charges against him, as the case may be, on condition that he undergo such medical treatment for the disorder or handicap as the Prosecutor-General may specify.

(2) Notwithstanding any other law, if a person referred to in subsection (1) fails to comply with any condition imposed by the Prosecutor-General in terms of that subsection, the Prosecutor-General may institute fresh proceedings against him in respect of the offence concerned.

### **33 Periodical reports on detained patients**

The superintendent of an institution, special institution or other place in which a patient is detained under this Part shall submit a report to the Secretary as to the mental condition of the patient at such intervals as are specified in subsection (1) of section *twenty-two*.

### **34 Transfer of patients detained under this Part**

The Secretary may at any time, by warrant, order the removal of a patient who is detained in an institution or special institution under this Part to any other institution, special institution or other place, there to be detained until lawfully discharged under this Act or transferred to some other place, and the patient shall be so removed and detained in accordance with the terms of the warrant:

Provided that—

- (i) a patient such as is described in subsection (4) of section *thirty* shall not be transferred except on a report from a special board, unless he is being transferred to a hospital for treatment and the Secretary considers that the degree of urgency is such that it would be dangerous to delay the transfer;
- (ii) a patient shall not be transferred to a prison without the previous consent in writing of the Director of Prisons.

### **35 Discharge of patients detained under this Part**

(1) Subject to this section, the Mental Health Review Tribunal may order the discharge of any patient who is detained under this Part, except a patient detained in a special institution.

(2) A patient who is detained in an institution or other place for which a mental hospital board has been established shall not be discharged in terms of subsection (1) unless the mental hospital board has reported on the patient's mental state and the desirability or otherwise of his, discharge, and the Mental Health Review Tribunal has considered the report.

(3) A discharge in terms of subsection (1) may be either absolute or conditional.

- (4) When a patient is conditionally discharged under this section—
- (a) a report on his mental state, and on any further care or treatment he may require, shall be made to the Secretary by such persons, at such times and containing such particulars as may be required by the warrant of discharge or by regulations, and the Secretary shall transmit the report to the Minister responsible for justice together with his observations on them; and
  - (b) if any of the conditions of the patient's discharge appear to the Minister responsible for justice to have been broken, he shall submit a statement of the case to the Mental Health Review Tribunal, which may issue a warrant directing that the patient be taken into custody and removed to an institution, special institution or other place named in the warrant, and thereupon the patient may be taken and shall be received, detained and treated in that institution, special institution or other place as though he had been removed to it in accordance with an order of a judge issued in terms of this Act.

(5) Conditions under which a patient is discharged in terms of subsection (1) may include a condition that he be admitted to any institution as a temporary patient in terms of Part VII or as a patient in terms of Part VIII.

(6) Where the Mental Health Review Tribunal makes an order in terms of subsection (1) for the discharge of a patient who is under sentence of death—

- (a) the superintendent of the institution or other place in which the patient is detained shall forthwith send a copy of the order to the Minister responsible for justice, who shall ascertain the decision of the President as to the disposal of the patient; and
- (b) the patient shall not be discharged from the institution or place which he is detained until the President's decision is known; and
- (c) the patient shall thereafter be dealt with as the President may direct.

### **36 Appeal to Mental Health Review Tribunal in certain cases**

(1) Subject to this section, an appeal shall lie to the Mental Health Review Tribunal against—

- (a) the continued detention of a patient in an institution or other place under an order or direction given in terms of section *twenty-six*, *twenty-seven*, *twenty-nine*; or *thirty*;
- (b) any order or direction given in terms of section *twenty-six*, subparagraph (iii) of paragraph (a) of subsection (3) of section *twenty-seven*, subparagraph (iii) of paragraph (a) or (b) of subsection (4) of section *twenty-eight* or paragraph (b) or (c) of subsection (2) of section *twenty-nine*.

(2) An appeal in terms of subsection (1) may be made—

- (a) by the patient concerned; or
- (b) by the patient's guardian; or
- (c) if the patient is not a minor, by his curator, spouse, close relative or friend who is not a minor;

and, in the case of an appeal against an order or direction given in terms of paragraph (b) of subsection (1), by the Prosecutor-General.

(3) Except with the consent of the Mental Health Review Tribunal, not more than one appeal in terms of subsection (1) against the continued detention of any patient shall be heard by the Tribunal in each year following the patient's admission to the institution or other place.

(4) Section *eighty-one* shall apply to the noting of an appeal in subsection (1), the procedure to be followed and the Mental Health Review Tribunal's powers on such an appeal.

## **PART IV**

### **MENTALLY DISORDERED OR INTELLECTUALLY HANDICAPPED PATIENTS WHO ARE DANGEROUS**

### **37 Admission to special institutions of mentally disordered or intellectually handicapped patients who are dangerous**

(1) Notwithstanding section *eight* or *twenty-six*—

- (a) if it appears to a magistrate, on considering—
  - (i) the medical certificates relating to an application made in terms of section *four* for a reception order; or
  - (ii) the medical certificate accompanying an urgency application made in terms of section *eleven*; or
  - (iii) the medical certificates given pursuant to an order made in terms of subsection (2) of section *twenty-six*; that the patient concerned is a danger to others; and
- (b) one of the medical certificates is given by a designated medical practitioner and recommends that the patient be detained in a special institution;

the magistrate, in issuing a reception order, may direct that the patient be removed to, and received and detained in, a special institution.

(2) If the superintendent of an institution in which a patient is detained under the authority of a reception order or an order made in terms of section *eighteen* submits to a magistrate the reports in the prescribed form of any two or more medical practitioners, at least one of whom is a designated medical practitioner, who—

- (a) certify that the patient is a danger to others; and

(b) recommend that the patient be transferred to a special institution; the magistrate may issue an order directing that the patient be removed to, and detained in, a special institution and shall thereupon cause a copy of the order to be sent to the Prosecutor-General for submission to a judge in chambers.

(3) Without derogation from section *eighteen*, a judge who considers an order referred to in subsection (1) or (2) may—

(a) if he is satisfied that the patient is a danger to others and that a designated medical practitioner recommends the patient's detention in a special institution, confirm the magistrate's order; or

(b) if he is not so satisfied, issue an order directing the patient's transfer to an institution.

(4) The Registrar of the High Court shall send three copies of any order made by a judge in terms of subsection (3) to the Prosecutor-General, who shall send one copy to the superintendent of the institution or special institution concerned and another to the Secretary.

### **38 Powers of court in criminal cases in relation to mentally disordered or intellectually handicapped persons who are dangerous**

(1) In this section—

“magistrate” includes the chief magistrate and any regional magistrate.

(2) Where a judge or magistrate presiding over criminal proceedings finds that the accused person is mentally disordered or intellectually handicapped but is able to understand the nature of the proceedings and properly to conduct his defence, and evidence has been adduced that two medical practitioners, one of whom is a designated medical practitioner, are of the opinion that the accused person is a danger to others—

(a) if the court acquits the accused person, the judge or magistrate, notwithstanding, any other law, may order that the accused person be returned to prison and subsequently be transferred to, and detained in, a special institution specified in the order:

Provided that an order made by a magistrate in terms of this paragraph shall not authorize the accused person's detention in a special institution for more than eight weeks;

(b) if the court convicts the accused person, the judge or magistrate who passes sentence may, in addition to any sentence he may impose, order that the accused person be returned to prison and subsequently be transferred to, and detained, in a special institution specified in the order:

Provided that—

- (i) subject to proviso (ii), this paragraph shall not apply if the accused person is sentenced to death;
- (ii) if the accused person is sentenced to death and the death sentence is subsequently commuted, the President may direct that the accused person be transferred to, and detained in, a special institution.

(3) Where a judge or magistrate makes an order in terms of paragraph (a) or (b) of subsection (2), the registrar or clerk of the court concerned shall forthwith send a certified copy of the order—

(a) to the officer in charge of the prison in which the accused person has been detained or to which he has been returned; and

(b) to the superintendent of the special institution to which the accused person is to be transferred; and

(c) where the order has been made by a judge, to a magistrate of the province in which the accused person was residing.

(4) Where a magistrate makes an order in terms of paragraph (a) of subsection (2), he shall, within three weeks, send a copy of the order, together with a record of the proceedings, to the Prosecutor-General who shall, before the expiry of the order, submit the papers to the Registrar of the High Court for consideration by a judge in chambers.

(5) A judge, on considering an order submitted to him in terms of subsection (4), may—

(a) if he is satisfied that an order for the patient's further detention should be made, forthwith order the patient's detention in a special institution for a definite or indefinite period, and such an order may include provision for any matter referred to in paragraph (c) of subsection (1) of section *eighteen* and shall have the same effect as an order made under that section; or

(b) direct that the patient be discharged immediately;

and generally give such directions as appear to him to be appropriate.

(6) Where a judge or magistrate has made an order in terms of paragraph (b) of subsection (2)—

(a) if, as a result of any sentence imposed, the patient is required to undergo any period of imprisonment, the imprisonment shall be served in the special institution:

Provided that the patient may be transferred from the special institution to a prison if the order is set aside on review or appeal;

(b) notwithstanding any other law, the patient shall not be sentenced to receive any corporal punishment.

(7) Where a magistrate has made an order in terms of paragraph (b) of subsection (2), the order shall be subject to review by a judge, and subsections (1) and (4) of section 57 of the Magistrates Court Act [Chapter 7:10] and section 29 of the High Court Act [Chapter 7:06] shall apply, mutatis mutandis, in relation to the proceedings concerned.

(8) An order made in terms of paragraph (b) of subsection (2) shall be regarded as a conviction for the purpose of any appeal or reservation of a question of law, and sections 34 to 41 of the High Court Act [Chapter 7:06] and sections 9 to 19 of the Supreme Court Act [Chapter 7:13] shall apply, mutatis mutandis, in relation to the proceedings concerned.

### **39 Discharge of patients from special institutions**

(1) Subject to this section, the Mental Health Review Tribunal may order—

- (a) the discharge, either absolute or conditional; or
- (b) the transfer to an institution;

of a patient received into a special institution:

Provided that the Tribunal shall not order the discharge or transfer of a patient received into a special institution in terms of Part III unless a special board has reported on the patient's mental state and the desirability or otherwise of his discharge and, where appropriate, has made proposals for his after-care, and the Mental Health Review Tribunal has considered the report.

(2) Subsections (4) and (5) of section *thirty-five* shall apply, mutatis mutandis, in respect of a patient discharged conditionally in terms of subsection (1).

### **40 Appeal to Mental Health Review Tribunal in respect of detention in special institution**

(1) Subject to this section, an appeal shall lie to the Mental Health Review Tribunal against the continued detention of a patient who is detained in a special institution.

(2) An appeal in terms of subsection (1) may be made—

- (a) by the patient concerned; or
- (b) by the patient's guardian; or
- (c) if the patient is not a minor, by his curator, spouse, close relative or friend who is not a minor.

(3) Except with the consent of the Mental Health Review Tribunal, not more than one appeal in respect of any patient shall be heard by the Tribunal in each year following the patient's admission to a special institution.

(4) Section *eighty-one* shall apply to the noting of an appeal in terms of subsection (1), the procedure to be followed, and the Mental Health Review Tribunal's powers on such an appeal.

## **PART V**

### **PATIENTS RESIDING IN PRIVATE DWELLING-HOUSES**

### **41 Power of Secretary to authorize detention of patient in private dwelling-house**

(1) If—

- (a) a mentally disordered or intellectually handicapped person is residing in a private dwelling-house with relatives or other persons who receive no remuneration for his maintenance or care; and
- (b) the mental disorder or intellectual handicap has continued for three months and is of such a nature as to require compulsory confinement in the dwelling-house or restraint or coercion of any kind and for any period;

the person who has charge of the patient shall inform a magistrate for the province in which the dwelling-house is situated of the patient's circumstances and shall send the magistrate at least one certificate signed by a medical practitioner as to—

- (i) the patient's mental and physical condition; and
- (ii) the reasons, if any, which make it desirable for the patient to remain under private care.

(2) On receipt of a report and certificate in terms of subsection (1), the magistrate shall send them, together with his comments on them and such other documents as he thinks necessary, to the Secretary, who may order that—

- (a) the patient shall continue to be detained in the private dwelling-house under such conditions of care, treatment and control as the Secretary may specify; or
- (b) steps be taken by the person who has charge of the patient to obtain a reception order for the patient or to have the patient admitted for temporary treatment in terms of Part VII.

### **42 Number of patients that may be detained in one private dwelling-house**

The occupier of a private dwelling-house shall ensure that not more than one mentally disordered or intellectually handicapped person resides or is detained or kept in the dwelling-house, whether in terms of section *forty-one* or otherwise, at any one time unless—

- (a) the other patient or patients are members of the same family; and

- (b) the Secretary has given permission in writing for the patients to reside in the same private dwelling-house.

#### **43 Power of magistrate to investigate treatment of patients in private dwelling-houses**

On receipt of any report or information that a patient who resides or is detained in a private dwelling-house is wrongly or cruelly treated or neglected in any manner, a magistrate may visit the patient in the private dwelling-house and may make such inquiries and investigation as he thinks necessary, whether by himself or through a psychiatric nurse practitioner, a designated psychiatric nurse, social worker or clinical psychologist or a police officer, and thereafter shall take such proceedings in the matter as may be necessary.

#### **44 Visiting of patients detained in private dwelling-houses**

(1) A magistrate shall appoint a medical practitioner approved by the Secretary to visit each patient who is detained under an order in terms of section *forty-one* within the magistrate's province, and the medical practitioner so appointed—

- (a) shall visit the patient at least once in every three months and at such other times as the Secretary may direct; and
- (b) after each visit in terms of paragraph (a), shall—
  - (i) enter, his name and address and the date and time of his visit in a book to be kept in the dwelling-house concerned by the person who has charge of the patient; and
  - (ii) complete a report in the prescribed form on the patient's mental and physical state and on the suitability of the dwelling-house in which the patient is detained; and
- (c) during the first visit in terms of paragraph (a), shall ensure that the patient has been advised of his right to appeal to the Mental Health Review Tribunal in terms of section *forty-five*.

(2) Within seven days after each visit in terms of subsection (1), the person who has charge of the patient shall send the Secretary a copy of the medical practitioner's report made in terms of subparagraph (ii) of paragraph (b) of that subsection.

(3) On receipt of a copy of a report sent to him in terms of subsection (2), the Secretary may order—

- (a) such modifications to the care, treatment or control of the patient concerned as he thinks appropriate; or
- (b) that the patient concerned be transferred to an institution.

(4) The Secretary shall send a copy of any order made by him in terms of subsection (3) to the magistrate for the province in which the private dwelling-house concerned is situated, and the magistrate shall ensure that the order is implemented.

#### **45 Right of patient detained in private dwelling-house to appeal to Mental Health Review Tribunal**

(1) Subject to this section, an appeal shall lie to the Mental Health Review Tribunal against the continued detention of a patient in a private dwelling-house under an order in terms of section *forty-one*.

(2) An appeal in terms of subsection (1) may be made—

- (a) by the patient concerned; or
- (b) by the patient's guardian; or
- (c) if the patient is not a minor, by his curator, spouse, close relative or friend who is not minor.

(3) Except with the consent of the Mental Health Review Tribunal, not more than one appeal in respect of any patient shall be heard by the Tribunal in each year following the issue of the order in terms of section *forty-one* for the patient's detention in the private dwelling-house concerned.

(4) Section *eighty-one* shall apply to the noting of an appeal in terms of subsection (1), the procedure to be followed in such an appeal and the Mental Health Review Tribunal's powers on such an appeal.

### **PART VI**

#### **INFORMAL ADMISSION AND TREATMENT OF PATIENTS AND PATIENTS IN SINGLE CARE**

#### **46 Places that may receive informal patients**

(1) The Minister may authorize any hospital, nursing-home or other place to receive patients in terms of this Part for treatment as informal patients without a reception order.

(2) An authority in terms of subsection (1) may be absolute or subject to such conditions as the Minister thinks fit.

(3) The Minister may at any time revoke an authority in terms of subsection (1) or amend any of the conditions subject to which it was given:

Provided that before doing so the Minister shall afford the person in charge of the hospital, nursing-home or place concerned an opportunity to make representations in the matter, unless the revocation or amendment is made at his request.

#### **47 Reception and detention of informal patients and patients in single care**

(1) In this section—

“guardian”, in relation to a person who has not attained his majority, includes anyone who has charge of that person.

(2) If a person who has attained his majority wishes to submit himself informally to treatment for mental disorder or intellectual handicap, he may on written application—

(a) be received and detained without a reception order as an informal patient—

(i) in any institution; or

(ii) in any hospital, nursing-home or other place which is authorized in terms of section *forty-six* to receive such patients;

or

(b) be received into the charge of a person authorized by the Secretary to receive him as a patient in single care.

(3) If the parent or guardian of a person who has not attained his majority wishes that person to be treated informally for mental disorder or intellectual handicap, that person may, on written application by the parent or guardian—

(a) be received and detained without a reception order as an informal patient—

(i) in any institution; or

(ii) in any hospital, nursing-home or other place which is authorized in terms of section *forty-six* to receive such patients;

or

(b) be received into the charge of a person authorized by the Secretary to receive him as a patient in single care;

but the patient shall not be so received on his own application.

(4) An application by a parent or guardian in terms of subsection (3) shall be accompanied by a medical recommendation which—

(a) is signed by—

(i) a medical practitioner who has attended the patient for at least three months before the date of the recommendation; or

(ii) a medical practitioner, psychiatric nurse practitioner, designated psychiatric nurse, designated social worker or designated clinical psychologist who is employed by the State or a local authority;

and

(b) states—

(i) the qualifications of the medical practitioner or other person who has signed it; and

(ii) the date or dates on which the medical practitioner or other person who has signed it examined the patient: and

(iii) that the patient is likely to benefit by being received informally and treated for mental disorder or intellectual handicap under this section.

(5) A medical recommendation shall cease to have effect for the purposes of subsection (4) fourteen days after the person who signed the recommendation last examined the patient for the purpose of making the recommendation.

#### **48 Notice of reception, death, departure or discharge of informal patients**

(1) The superintendent of an institution or other place into which a person has been received as an informal patient shall, before the end of the second day after the day on which he was so received, inform the Secretary, in writing, of the patient's reception.

(2) If a patient received into all institution or other place as an informal patient dies in, leaves or disappears from that institution or place, the superintendent of the institution or place shall, before the end of the second day after the day of its occurrence, inform the Secretary, in writing, of the patient's death, departure or disappearance.

(3) Where an informal patient is discharged in terms of section *twenty-four* from the institution or other place into which he was received under this Part, the superintendent of the institution or place shall inform the Secretary, in writing, of the discharge not later than ten days after discharging the patient.

#### **49 Departure of informal patients, from institution or place**

(1) In this section—

“guardian”, in relation to a person who has not attained his majority, includes anyone who has charge of that person.

(2) Subject to subsections (3) and (4), an informal patient may leave the institution or other place in which he is being detained—

(a) if he has attained his majority, upon giving the superintendent of the institution or other place at least one week's written notice of his intention to do so; or

- (b) if he has not attained his majority, upon his parent or guardian giving the superintendent of the institution or other place at least one week's notice written of the intention to do so:

Provided that the superintendent may permit the patient to leave on less than one week's notice.

(3) If it appears to a medical practitioner employed at all institution or other place in which an informal patient is detained that the patient is mentally disordered or intellectually handicapped to such a degree that it is necessary, in the interests of his health or welfare or the safety of others, to restrain him from leaving the institution or place, the medical practitioner—

- (a) may direct that the patient be detained in the institution or place for not more than seventy-two hours; and
  - (b) if he gives a direction in terms of paragraph (a), shall immediately notify the superintendent of the institution or place, who shall forthwith send the Secretary a written report as to the patient's mental and physical condition.
- (4) If it appears to a psychiatric nurse practitioner or a psychiatric nurse that—
- (a) an informal patient is mentally disordered or intellectually handicapped to such a degree that it is necessary, in the interests of his health or welfare or the safety of others, to restrain him from leaving the institution or other place in which he is detained; and
  - (b) it is impractical to secure the immediate attendance of a medical practitioner to examine the patient for the purposes of subsection (3);

the psychiatric nurse practitioner or psychiatric nurse may direct that the patient be detained in the institution or other place for not more than twenty-four hours.

(5) On receipt of a report in terms of subsection (3), the Secretary may—

- (a) direct that the patient be dealt with as if an application for his admission into the institution or other place concerned had been made in terms of section *fifty-three*; or
- (b) direct that an application be made for a reception order in respect of the patient; or
- (c) direct that the patient be discharged; or
- (d) give such other order or direction with respect to the case as he thinks fit.

## **50 Procedure where doubt arises as to continued consent to treatment of informal patient**

(1) If an informal patient who has attained his majority becomes incapable, though mental disorder or intellectual handicap, of expressing himself as willing or unwilling to continue to receive treatment—

- (a) he shall not thereafter be detained in the institution or place as an informal patient for more than twenty-eight days unless in the meantime he has regained his power of expression; and
- (b) the superintendent of the institution or place in which the patient is detained shall send the Secretary a written report as to the patient's circumstances and his mental and physical condition.

(2) If—

- (a) an informal patient who has not attained his majority ceases to have a parent or guardian; or
- (b) the parent or guardian of an informal patient referred to in paragraph (a) is incapable performing his duties as such, or refuses or persistently neglects to perform them;

the superintendent of the institution or place in which the patient is detained shall forthwith send the Secretary a written report as to the patient's circumstances and his mental and physical condition.

(3) On receipt of a report in terms of subsection (1) or (2), the Secretary may—

- (a) direct that the patient be dealt with as if an application for his admission into the institution or other place concerned had been made in terms of section *fifty-three* or *sixty-one*; or
- (b) direct that an application be made for a reception order in respect of the patient; or
- (c) direct that the patient be discharged; or
- (d) give such other order or direction with respect to the case as he thinks fit.

## **51 Application of Part to patients in single care**

Sections *forty-eight*, *forty-nine* and *fifty* shall apply, mutatis mutandis, to any patient received into single care in terms of subsection (2) or (3) of section *forty-seven* as if the person into whose charge the patient is received were the superintendent of an institution.

## **PART VII**

### TEMPORARY TREATMENT WITHOUT CERTIFICATION

## **52 Places that may receive patients for temporary treatment**

(1) The Minister may authorize any hospital, nursing-home or other place to receive patients in terms of this Part for temporary treatment without a reception order.

(2) An authority in terms of subsection (1) may be absolute or subject to such conditions as the Minister thinks fit.

(3) The Minister may at any time revoke an authority in terms of subsection (1) or amend any of the conditions subject to which it was given:

Provided that before doing so the Minister shall afford the person in charge of the hospital, nursing-home or place concerned an opportunity to make representations in the matter, unless the revocation or amendment is made at his request.

### **53 Reception of temporary patients**

(1) Subject to this Part, the superintendent of an institution or of a hospital, nursing-home or other place that has been authorized in terms of section *fifty-two* may, without a reception order, receive, accommodate and treat as a temporary patient a person who—

- (a) is mentally disordered or intellectually handicapped, whether or not he is capable of expressing volition; and
- (b) is likely to benefit from temporary treatment but, on account of his mental state, is unfit to be received and treated as an informal patient under Part VI.

(2) An application for the reception of a temporary patient in terms of subsection (1) shall be made in the prescribed form to the superintendent of the institution or other place concerned by—

- (i) the patient's guardian, where the patient is a minor; or
- (ii) the patient's spouse; or
- (iii) a close relative of the patient, if the patient is unmarried or is married but his spouse is not available:

Provided that, if the superintendent is satisfied that the patient's guardian, spouse or close relative, as the case may be, is not available, he may accept an application made by a medical practitioner, a clinical psychologist, a social worker employed by the State or a local authority or a nurse registered under the Health Professions Act [*Chapter 27:19*] or by a member of any other class of persons that may be prescribed.

[Subsection mended by Act 6/2000.]

(3) An application in terms of subsection (2) shall be accompanied by a medical recommendation in the prescribed form which—

- (a) is signed by a medical practitioner who, if practicable, shall be the patient's usual medical attendant or by a psychiatric nurse practitioner:

Provided that the medical recommendation shall not be signed by a person who is prohibited by section *twenty-one* from signing a medical certificate; and

- (b) states—
  - (i) the qualifications of the medical practitioner or psychiatric nurse practitioner who has signed it; and
  - (ii) that the medical practitioner or psychiatric nurse practitioner who has signed it is not prohibited from doing so; and
  - (iii) the date or dates on which the medical practitioner or psychiatric nurse practitioner who has signed it examined the patient; and
  - (iv) that the patient is likely to benefit by being received, accommodated and treated as a temporary patient in terms of this Part.

(4) A medical recommendation shall cease to have effect for the purposes of subsection (3)—

- (a) five days after it was signed; or
- (b) fourteen days after the person who signed it last examined the patient for the purpose of making the recommendation;

whichever occurs earlier.

(5) Where a magistrate is satisfied that reasonable force will be needed to secure the removal of a patient to an institution or other place for temporary treatment in terms of this section, the magistrate may, on the application of the person who applied for the patient's reception in terms of subsection (2), issue an order authorizing the use of reasonable force, including the forcible entry of premises, for the purpose.

### **54 Preliminary report on temporary patients**

Within seventy-two hours after the reception of a patient in terms of section *fifty-three*, the superintendent of the institution or other place in which the patient is detained, or the medical practitioner treating the patient therein, shall prepare a written report on the patient's mental state and, if he is satisfied that the patient is not mentally disordered or intellectually handicapped, shall discharge the patient forthwith.

### **55 Notification of reception, death, departure or discharge of temporary patients**

(1) The superintendent of an institution or other place into which a person has been received as a temporary patient shall, before the end of the third day after the day on which he was so received—

- (a) send the Secretary written notice of his reception, together with a copy of—
  - (i) the application on which the patient was received; and
  - (ii) the medical recommendation that accompanied the application; and
  - (iii) the report referred to in section *fifty-four*;

and

- (b) send written notice of his reception to the magistrate for the province in which the patient was residing immediately before his reception:

Provided that, if the patient has already been discharged in terms of section *fifty-four*, this section shall not apply.

(2) If a patient received into an institution or other place as a temporary patient dies in, leaves or disappears from that institution or place, the superintendent of the institution or place shall, before the end of the second day after the day of its occurrence, inform the Secretary, in writing, of the patient's death, departure or disappearance.

(3) Where a temporary patient is discharged in terms of section *twenty-four* or this Part from the institution or other place into which he was received as a temporary patient, the superintendent of the institution or place shall inform the Secretary, in writing, of the discharge not later than ten days after discharging the patient:

Provided that, if the discharge takes place before the Secretary has been notified in terms of subsection (1) of the patient's reception, the superintendent need not inform the Secretary of the discharge.

## **56 Visiting of temporary patients detained in places other than institutions**

(1) Within one month after the reception of a temporary patient into a hospital, nursing-home or place, other than an institution, he shall be visited by a medical practitioner who is—

- (a) a member of the mental hospital board established for the hospital, nursing-home or place; or
- (b) appointed for the purpose by the Secretary.

(2) If the medical practitioner making the visit in terms of subsection (1) is of the opinion that—

- (a) the patient should be further detained, he shall sign a statement to that effect and leave it with the superintendent of the hospital, nursing-home or place;
- (b) the patient should not be further detained, he shall, before the end of the second day after the day of the visit, send the Secretary a written report stating his opinion and the grounds on which it is based, together with such other observations as he thinks fit.

## **57 Period of detention of temporary patients**

(1) Subject to this section, a person received as a temporary patient shall not be detained as such for longer than six months.

(2) Where it is considered that a temporary patient will not recover within the six-month period referred to in subsection (1) but that his early recovery seems reasonably probable, one of the persons mentioned in subsection (2) of section *fifty-three* may apply to the Secretary in the prescribed form for an extension of the period of treatment.

(3) An application in terms of subsection (2) shall be accompanied by the recommendation of the superintendent of the institution or other place in which the temporary patient is being detained, and by such other evidence as may be prescribed.

(4) After considering an application in terms of subsection (2), the Secretary may authorize the patient's detention and treatment as a temporary patient for a further period of up to three months:

Provided that the total of the periods authorized upon two or more such applications shall not exceed six months.

## **58 Discharge of temporary patients**

(1) The Secretary may at any time order that a temporary patient be discharged or that steps be taken to deal with him under Part II, and the superintendent of the institution or other place in which the patient is being detained shall forthwith cause the patient to be discharged or dealt with accordingly.

(2) The person who made the application for the admission of a temporary patient may at any time request the patient's discharge, and the superintendent of the institution or other place in which the patient is being detained shall, within one week of receiving the request, cause the patient to be discharged accordingly.

(3) The provisions of this Act relating to the discharge of patients detained under Part II shall apply, *mutatis mutandis*, to persons detained as temporary patients.

## **59 Right of temporary patient to appeal to Mental Health Review Tribunal**

(1) Subject to this section, an appeal shall lie to the Mental Health Review Tribunal against the continued detention of a temporary patient in terms of this Part.

(2) An appeal in terms of subsection (1) may be made—

- (a) by the patient concerned; or
- (b) by the patient's guardian; or
- (c) if the patient is not a minor, by his curator, spouse, close relative or friend who is not a minor.

(3) Section *eighty-one* shall apply to the noting of an appeal in terms of subsection (1), the procedure to be followed in such an appeal and the Mental Health Review Tribunal's powers on such an appeal.

## PART VIII

### TREATMENT AND TRAINING WITHOUT CERTIFICATION OF INTELLECTUALLY HANDICAPPED PATIENTS WITH BEHAVIOURAL PROBLEMS

#### **60 Places that may receive intellectually handicapped patients for treatment or training**

(1) The Minister may authorize any hospital, nursing-home or other place to receive patients in terms of this Part for treatment and training without a reception order.

(2) An authority in terms of subsection (1) may be absolute or subject to such conditions as the Minister thinks fit.

(3) The Minister may at any time revoke an authority in terms of subsection (1) or amend any of the conditions subject to which it was given:

Provided that before doing so the Minister shall afford the person in charge of the hospital, nursing-home or place concerned an opportunity to make representations in the matter, unless the revocation or amendment was made at his request.

#### **61 Reception of intellectually handicapped patients for treatment or training**

(1) Notwithstanding anything to the contrary in this Act but subject to this Part, the superintendent of an institution or of a hospital, nursing-home or other place that has been authorized in terms of section *sixty* may, without a reception order, receive, accommodate and treat and additionally, or alternatively, train a person who—

- (a) is intellectually handicapped with behavioural problems; and
- (b) is likely to benefit from such treatment or training but, on account of his intellectual handicap, is unfit to be received and treated as an informal patient under Part VI.

(2) An application for the reception of a patient in terms of subsection (1) shall be made in the prescribed form to the superintendent of the institution or other place concerned by—

- (i) the patient's guardian, where the patient is a minor; or
- (ii) the patient's spouse; or
- (iii) a close relative of the patient, if the patient is unmarried or is married but his spouse is not available:

Provided that, if the superintendent is satisfied that the patient's guardian, spouse or close relative, as the case may be, is not available, he may accept an application made by a medical practitioner, a clinical psychologist, a social worker employed by the State or a local authority or a nurse registered under the Health Professions Act [*Chapter 27:19*] or by a member of any other class of persons that may be prescribed.

[Subsection amended by Act 6/2000 with effect from the 2nd April, 2001.]

(3) An application in terms of subsection (2) shall be accompanied by a medical recommendation in the prescribed form which—

- (a) is signed by a medical practitioner who, if practicable, shall be the patient's usual medical attendant, or by a psychiatric nurse practitioner:

Provided that the medical recommendation shall not be signed by a person who is prohibited by section *twenty-one* from signing a medical certificate; and

- (b) states—
  - (i) the qualifications of the medical practitioner or psychiatric nurse practitioner who has signed it; and
  - (ii) that the medical practitioner or psychiatric nurse practitioner who has signed it is not prohibited from doing so; and
  - (iii) the date or dates on which the medical practitioner or psychiatric nurse practitioner who has signed it examined the patient; and
  - (iv) that the patient is likely to benefit by being received, accommodated, treated and additionally, or alternatively, trained in terms of this Part.

(4) A medical recommendation shall cease to have effect for the purposes of subsection (3)—

- (a) five days after it was signed; or
- (b) fourteen days after the person who signed it last examined the patient for the purpose of making the recommendation;

whichever occurs earlier.

(5) Where a magistrate is satisfied that reasonable force will be needed to secure the removal of a patient to an institution or other place for treatment or training in terms of this section, the magistrate may, on the application of the person who applied for the patient's reception in terms of subsection (2), issue an order authorizing the use of reasonable force, including the forcible entry of premises, for the purpose.

#### **62 Preliminary report on intellectually handicapped patients**

Within seventy-two hours after the reception of a patient in terms of section *sixty-one*, the superintendent of the institution or other place in which the patient is detained, or the medical practitioner treating the patient therein, shall prepare a written report on the patient's mental state and, if he is satisfied that the patient is not intellectually handicapped with behavioural problems, shall discharge the patient forthwith.

### **63 Notification of reception, death, departure or discharge of intellectually handicapped patients**

(1) The superintendent of an institution or other place into which a person has been received as a patient in terms of section *sixty-one* shall, before the end of the third day after the day on which he was so received—

- (a) send the Secretary written notice of his reception, together with a copy of—
  - (i) the application on which the patient was received; and
  - (ii) the medical recommendation that accompanied the application; and
  - (iii) the report referred to in section *sixty-two*;

and

- (b) send written notice of his reception to the magistrate for the province in which the patient was residing immediately before his reception:

Provided that, if the patient has already been discharged in terms of section *sixty-two*, this section shall not apply.

(2) If a patient received into an institution or other place in terms of section *sixty-one* dies in, leaves or disappears from that institution or place, the superintendent of the institution or place shall, before the end of the second day after the day of its occurrence, inform the Secretary, in writing, of the patient's death, departure or disappearance.

(3) Where a patient who has been received into an institution or other place in terms of section *sixty-one* is discharged in terms of section *twenty-four* or this Part from the institution or other place, the superintendent of the institution or place shall inform the Secretary, in writing, of the discharge not later than ten days after discharging the patient:

Provided that, if the discharge takes place before the Secretary has been notified in terms of subsection (1) of the patient's reception, the superintendent need not inform the Secretary of the discharge.

### **64 Visiting of intellectually handicapped patients**

(1) Within one month after the reception of a patient in terms of section *sixty-one* into a hospital, nursing-home or place, other than an institution, he shall be visited by a medical practitioner who is—

- (a) a member of the mental hospital board established for the hospital, nursing-home or place; or
- (b) appointed for the purpose by the Secretary.

(2) If the medical practitioner making the visit in terms of subsection (1) is of the opinion that—

- (a) the patient should be further detained, he shall sign a statement to that effect and leave it with the superintendent of the hospital, nursing-home or place;
- (b) the patient should not be further detained, he shall, before the end of the second day after the day of the visit, send the Secretary a written report stating his opinion and the grounds on which it is based, together with such other observations as he thinks fit.

### **65 Period of detention of intellectually handicapped patients**

Subject to this Act, a patient received into an institution or other place in terms of section *sixty-one* may be detained there for such period as the superintendent considers desirable in the circumstances.

### **66 Discharge of intellectually handicapped patients**

(1) The Secretary may at any time order that a patient received into an institution or other place in terms of section *sixty-one* should be discharged or that steps be taken to deal with him under Part II, and the superintendent of the institution or other place in which the patient is being detained shall forthwith cause the patient to be discharged or dealt with accordingly.

(2) The person who made the application in terms of section *sixty-one* for the admission of a patient may at any time request the patient's discharge, and the superintendent of the institution or other place in which the patient is being detained shall, within one week of receiving the request, cause the patient to be discharged accordingly:

Provided that the superintendent may apply in terms of section *four* for a reception order, in which case—

- (a) the superintendent shall—
  - (i) submit with his application the application referred to in subsection (2) of section *sixty-one*; and
  - (ii) indicate in his application why he considers the patient should not be discharged and should be the subject of a reception order; and
- (b) Part II shall apply, mutatis mutandis, in relation to the application and, unless the magistrate refuses to issue a reception order, the patient shall not be discharged in terms of this subsection.

(3) Subject to this Part, the provisions of this Act relating to the discharge of patients detained under Part II shall apply, mutatis mutandis, to persons detained under this Part.

### **67 Right of intellectually handicapped patient to appeal to Mental Health Review Tribunal**

(1) Subject to this section, an appeal shall lie to the Mental Health Review Tribunal against the continued detention of a patient in terms of this Part.

- (2) An appeal in terms of subsection (1) may be made—

- (a) by the patient concerned; or
- (b) by the patient's guardian; or
- (c) if the patient is not a minor, by his curator, spouse, close relative or friend who is not a minor.

(3) Section *eighty-one* shall apply to the noting of an appeal in terms of subsection (1), the procedure to be followed in such an appeal and the Mental Health Review Tribunal's powers on such an appeal.

## PART IX

### MENTAL HOSPITAL BOARDS AND SPECIAL BOARDS

#### 68 Establishment and procedures of mental hospital boards

(1) The Minister shall establish a board, to be known as the mental hospital board, for every institution, special institution or other place in which patients are detained:

Provided that the Minister may establish a single board for two or more such institutions, special institutions or places.

(2) A mental hospital board shall consist of not fewer than five members appointed by the Minister, of whom—

- (a) one shall be a medical practitioner of not less than five years' standing; and
- (b) one shall be a legal practitioner:

Provided that, where the Minister is unable to find a suitable person qualified as required by paragraph (a) or (b), he shall appoint instead some other person—who, in his opinion, has suitable medical or legal experience, as the case may be.

(3) The Minister shall designate one member of every mental hospital board to be chairman of the board.

(4) The terms of office of members of hospital boards and their conditions of service, including the remuneration and allowances, if any, to be paid to them and the circumstances in which they are to vacate their offices, shall be as prescribed.

(5) The superintendent of each institution, special institution or place for which a mental hospital board has been established shall attend every meeting of the board as an advisory member, but shall have no vote on any issue before the board:

Provided that the superintendent may send a representative to attend on his behalf, unless the board has required him to attend in person.

(6) At each meeting of a mental hospital board, the superintendent of every institution, special institution or other place for which the board has been established, or his representative, shall present a report showing—

- (a) the number of patients admitted under each section of this Act since the date of the last meeting of the board; and
- (b) the number of patients discharged since that date; and
- (c) the number of patients who have died since that date; and
- (d) the number of patients who have been transferred to any other institution, special institution or place since that date; and
- (e) a return of the cases in which mechanical restraint has been imposed since that date; and
- (f) a return of orders for the seclusion of patients made since that date;

and shall bring to the board's notice any matter affecting the interests or welfare of any patient that he considers should be brought to the board's notice.

(7) Subject to this section, the procedure to be observed at meetings of mental hospital boards shall be as prescribed or as fixed by the Minister from time to time.

(8) Except as provided in this section or as may be prescribed, a mental hospital board shall have no authority over the superintendent of, or any other officer at, any institution, special institution or other place for which the board has been established.

#### 69 Funds and property of mental hospital boards

(1) A mental hospital board shall have power to control and administer any funds and other property that may accrue to it from any source whatsoever, but such funds and property shall be used only—

- (a) for the specific purpose, if any, for which the donor has given the funds or property; or
- (b) if no purpose has been specified by the donor, for the benefit of patients at any institution, special institution or other place for which the board has been established, including the provision of legal assistance for such patients.

(2) The chairman of a mental hospital board shall be responsible for keeping proper accounts of the board's funds and property, and such accounts shall be audited annually by the Comptroller and Auditor-General.

#### 70 Visits by members of mental hospital boards

(1) At least one member of a mental hospital board shall visit each institution, special institution or place in respect of which the board has been appointed at least once a month, and on each visit shall—

- (a) personally observe every patient admitted since the previous visit by a member of the board; and
- (b) inspect all facilities and equipment provided at the institution, special institution or place for the treatment of or use by patients.

(2) At least once every six months, two or more members of a mental hospital board shall personally observe every patient on the roll of each institution, special institution or place in respect of which the board has been appointed, except for patients who are absent on parole or probation, and shall afford every patient an opportunity to make whatever representations he may wish to make, in person and in private.

(3) A member of a mental hospital board who has made a visit in terms of subsection (1) or (2) shall report to the board any complaint, request or representation that has been made to him.

(4) A mental hospital board shall investigate every reasonable complaint reported to it in terms of subsection (3) and shall receive confirmation from the superintendent of the institution, special institution or place concerned that all patients have had their right to make representations explained to them.

(5) If a patient had not attained the age of sixteen years when he was received into an institution, special institution or other place in terms of this Act, the mental hospital board for the institution, special institution or place in which he is detained shall specially consider his case within three months after he attains that age.

#### **71 Reports, plans, etc., of mental hospital boards**

A mental hospital board shall—

- (a) from time to time, or when called upon by the Minister to do so, make to the Secretary such suggestions and observations as it considers desirable regarding the welfare of patients in the institution, special institution or other place for which the board has been established; and
- (b) report to the Secretary the result of any inspection made by it; and
- (c) formulate and consider plans for the after-care of patients in the institution, special institution or other place for which the board has been established.

#### **72 Mental hospital boards may discharge patients**

(1) Subject to this Act, a mental hospital board, after proper inquiry, may discharge, either conditionally unconditionally as it thinks fit, any patient, other than a patient admitted under Part III or IV, who is in any institution, special institution or place for which the board has been established, if the board considers the patient has recovered or is otherwise fit for discharge.

(2) A mental hospital board shall record in its minutes any resolution to discharge a patient in terms of subsection (1).

(3) When any action intended to be taken by a mental hospital board in terms of subsection (1) is in conflict with the advice given to the board by the superintendent of the institution, special institution or other place in which the patient is detained, the chairman of the board and the superintendent shall each submit a written report to the Secretary, who shall decide what action shall be taken in the matter.

#### **73 Special boards**

(1) The Minister shall establish one or more boards, to be known as special boards, for the purpose of making any recommendation or report required by section *twenty-nine*, *thirty-four* or *thirty-nine*:

Provided that the Minister may direct that the mental hospital board established for any institution, special institution or other place shall constitute a special board for the purpose of making any such report in relation to patients detained in that institution, special institution or place.

(2) A special board shall consist of not fewer than three members appointed by the Minister.

(3) The Minister shall designate one member of every special board to be chairman of the board.

(4) The terms of office of the members of special boards and their conditions of service, including the remuneration and allowances, if any, to be paid to them and the circumstances in which they are to vacate their offices, shall be as prescribed.

(5) Subject to this section, the procedure to be observed at meetings of special boards shall be as prescribed or as fixed by the Minister from time to time.

(6) Except as may be prescribed, a special board shall have no authority over the superintendent of, or any other officer at, any institution or special institution.

#### **74 Annual reports of mental hospital boards**

(1) At least once a year the chairmen of all mental hospital boards shall meet, at a date and place fixed by the Secretary, for the purpose of preparing an annual report which—

(a) shall outline the activities of the boards during the preceding twelve months; and

(b) shall report on the facilities and treatment provided at the institutions, special institutions and other places for which the boards have been established; and

(c) may contain proposals for improving the institutional special institutions and other places for which the boards have been established, or in regard to any other matter relating to the treatment, care or after-care of mentally disordered or intellectually handicapped persons.

(2) An annual report prepared in terms of subsection (1) shall be submitted to the Minister, who shall lay it before Parliament within three months after he receives it.

## PART X

### MENTAL HEALTH REVIEW TRIBUNAL

#### 75 Establishment and composition of Mental Health Review Tribunal

(1) There is hereby established a tribunal, to be known as the Mental Health Review Tribunal, which shall consist of—

- (a) a chairman, who shall be a judge or former judge of the Supreme Court or the High Court appointed by the President after consultation with the Judicial Service Commission; and
- (b) a deputy chairman, who shall be a registered legal practitioner of not less than seven years' standing, appointed by the President after consultation with the Judicial Service Commission; and
- (c) not fewer than five and not more than ten other members, who shall be appointed by the Minister after consultation with the chairman of the Tribunal and who shall be chosen for their ability and experience in psychiatry or the care and welfare of patients or their suitability otherwise for appointment.

(2) The terms of office of members of the Mental Health Review Tribunal and their conditions of service, including the remuneration and allowances, if any, to be paid to them, shall be as prescribed.

(3) In the absence or incapacity for any reason of the chairman of the Mental Health Review Tribunal, the deputy chairman shall exercise his functions.

(4) Subject to this Act, the procedure to be followed by the Mental Health Review Tribunal in the exercise of its functions shall be as prescribed or, failing such prescription, as may be fixed by the chairman.

#### 76 Functions of Mental Health Review Tribunal

The functions of the Mental Health Review Tribunal shall be—

- (a) to hear applications and appeals made to it by or on behalf of patients detained in institutions, special institutions and other places in terms of this Act; and
- (b) subject to this Act, to direct the release of patients detained in terms of this Act, where the Tribunal is satisfied that the patients concerned have recovered or are otherwise fit for release; and
- (c) to take all necessary steps to ensure that patients are accorded the rights to which they are entitled in terms of this Act and any other law; and
- (d) to exercise any other functions that are conferred on the Tribunal by or in terms of this Act or any other enactment.

#### 77 Sittings of Mental Health Review Tribunal

(1) The Mental Health Review Tribunal may sit at such places and at such times as the chairman of the Tribunal may determine from time to time.

(2) The functions of the Mental Health Review Tribunal may be exercised by three or more members sitting alone or assisted by assessors appointed in terms of subsection (3).

(3) With the approval of the chairman of the Tribunal, the person presiding over any sitting of the Mental Health Review Tribunal may appoint a person with expert knowledge to assist the Tribunal in an advisory capacity, but the Tribunal shall not be bound by any advice tendered by such a person.

#### 78 Power of Mental Health Review Tribunal to summon witnesses and receive evidence

(1) For the purpose of receiving evidence on any question before it, the Mental Health Review Tribunal shall have, the powers of the High Court to summon witnesses, to cause the oath to be administered to them, to examine them and to call for the production of books and documents.

(2) Any person who, without lawful excuse—

- (a) at or in the course of any hearing before the Mental Health Review Tribunal, shows disrespect in speech or manner to or with reference to the Tribunal or any member of the Tribunal; or
- (b) having been summoned to appear before the Mental Health Review Tribunal, fails to attend or, having attended, refuses to be sworn or fails to remain in attendance until excused by the person presiding over the Tribunal; or
- (c) causes an obstruction or disturbance in the course of a hearing before the Mental Health Review Tribunal; or
- (d) having been sworn at a hearing before the Mental Health Review Tribunal—
  - (i) refuses to answer any question lawfully put to him; or
  - (ii) makes a statement material to the question before the Tribunal, knowing the statement to be false or not knowing or believing it to be true;

shall be guilty of an offence and liable to a fine not exceeding one thousand dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(3) Any person summoned to appear before the Mental Health Review Tribunal shall be entitled to be paid such amount to defray his expenses as may be prescribed.

### **79 Inquiries by Mental Health Review Tribunal into institutions, etc.**

(1) The Mental Health Review Tribunal may hold an inquiry into the facilities and treatment provided at any institution, special institution or place at which patients are detained in terms of this Act.

(2) The chairman of the Mental Health Review Tribunal shall ensure that a copy of any findings, recommendations or report made by the Tribunal following an inquiry in terms of subsection (1) is submitted to the Secretary without delay.

### **80 Applications to Mental Health Review Tribunal for inquiry into grounds of detention**

(1) Subject to this Act any—

- (a) person who is detained in terms of this Act; or
- (b) guardian, curator, spouse or close relative of a person who is detained in terms of this Act; or
- (c) friend of a person who is detained in terms of this Act and who has no guardian, curator, spouse or close relative at or near the place where he is detained;

may apply to the Mental Health Review Tribunal for an inquiry into the grounds for and propriety of the detention, and on any such application the Tribunal may conduct such investigation or inquiry and make such order as it thinks fit.

(2) Nothing in subsection (1) shall derogate from any power of the High Court under this Act or any other law to investigate the circumstances of any person's detention and to give any order in respect of it.

### **81 Appeals to Mental Health Review Tribunal**

(1) The procedure for noting and hearing appeals to the Mental Health Review Tribunal in terms of this Act shall be as informal as possible and shall be as prescribed or as may be determined from time to time by the chairman of the Tribunal:

Provided that—

- (i) subject to proviso (ii), the Mental Health Tribunal shall ensure that any appellant is given a reasonable opportunity, regard being had to his mental state and all other circumstances, to put his case before the Tribunal;
- (ii) notwithstanding any other law, without the leave of the Mental Health Review Tribunal a patient shall not be entitled to appear before the Tribunal in person.

(2) If the chairman of the Mental Health Review Tribunal considers that it would be in the interests of justice for any appellant to have legal assistance in the preparation or conduct of his appeal, the chairman may certify that the appellant should have such legal assistance, and thereupon the provisions of any enactment regarding the grant of legal assistance to persons in criminal cases in the High Court shall apply, mutatis mutandis, in relation to that appellant.

(3) In an appeal in terms of this Act, the Mental Health Review Tribunal shall have the power, subject to this Act, to order—

- (a) that the appeal be dismissed;
- (b) that the patient whose case is the subject of the appeal be discharged, either conditionally or unconditionally, or transferred from one institution, special institution or other place to another;

and to give any other order for the just and expeditious determination of the appeal.

### **82 Appeals to Supreme Court against decisions of Mental Health Review Tribunal**

(1) Subject to this section, an appeal shall lie to the Supreme Court against any decision of the Mental Health Review Tribunal.

(2) An appeal in terms of subsection (1) may be made—

- (a) by any patient whose rights are affected by the decision concerned, or by the patient's guardian or, if the patient is not a minor, by the patient's curator, spouse, close relative or friend who is not a minor:

Provided that the leave of the chairman of the Tribunal or, if he refuses leave, the leave of a judge of the Supreme Court, shall be obtained before any such person notes an appeal; or

- (b) by the superintendent of the institution, special institution or other place in which the patient in respect of whom the decision was made is being detained; or
- (c) by the Attorney-General, where the decision concerned affects—
  - (i) the property of a patient for whom no curator bonis has been appointed; or
  - (ii) the release or discharge of any patient detained in terms of Part III or Part IV.

(3) An appeal in terms of subsection (1) shall be noted and prosecuted in accordance with rules of court made in terms of the Supreme Court Act [*Chapter 7:13*].

(4) On an appeal in terms of subsection (1), the Supreme Court may confirm, vary or set aside the decision appealed against, or make such other order in the matter as it thinks just.

(5) The effect of noting an appeal in terms of subsection (1) against a decision to release or discharge a patient shall have the effect of suspending the decision appealed against.

## PART XI

### CARE AND ADMINISTRATION OF PROPERTY OF MENTALLY DISORDERED OR INTELLECTUALLY HANDICAPPED PERSONS

#### 83 Interpretation in Part XI

In this Part—

“Master” means the Master of the High Court or an assistant Master of the High Court.

#### 84 Magistrate to inquire into and report on patient’s property or estate

(1) Every magistrate who—

- (a) issues a reception order or an order under subsection (2) of section *thirty-eight*; or
- (b) orders a person to be treated or to submit himself for treatment in terms of subsection (2) of section *twenty-six*, subsection (3) of section *twenty-seven*, subsection (4) of section *twenty-eight* or subsection (2) of section *twenty-nine*; or
- (c) receives notice of the admission of a patient under section *fifty-five* or *sixty-three*; or
- (d) receives a copy of an order sent to him in terms of subsection (8) of section *twenty-eight*, subsection (3) of section *twenty-nine* or subsection (3) of section *thirty-eight*;

shall immediately make full inquiry as to the patient’s circumstances and, where necessary, as to his estate, and shall send a report on the result of his inquiry to the Prosecutor-General.

(2) To assist him in his inquiry in terms of subsection (1), the magistrate may direct a designated social worker to visit the patient’s home or place of business and investigate the patient’s circumstances and property.

(3) A designated social worker shall comply with any directions given to him by a magistrate in terms of subsection (2).

#### 85 Steps to be taken for protection of patient’s property and maintenance of his dependents pending appointment of curator

(1) Until the appointment of a curator in terms of section *eighty-six* to care for and administer a patient’s estate—

- (a) the patient’s spouse; or
- (b) failing the patient’s spouse, any child of the patient who is over the age of eighteen; or
- (c) failing any child of the patient over the age of eighteen, any other of the patient’s close relatives; or
- (d) failing any of the patient’s close relatives, the person who had charge or control of the house or place where the patient was living when he was removed in terms of this Act to an institution, special institution or other place;

shall take charge of all property of whatever description belonging to the patient in the house or on the premises concerned and, subject to any directions given to him in terms of subsection (2), shall retain such property in his custody until delivery of the property is demanded by the curator or by any other person lawfully entitled to receive it.

(2) A magistrate for the province in which a patient was living immediately before he was removed to an institution, special institution or other place in terms of this Act shall have power to give such directions as he considers necessary for—

- (a) the care and administration of the patient’s estate; and
- (b) the carrying on of any business conducted by the patient; and
- (c) the maintenance of the patient’s dependents out of the patient’s estate;

and any person who has custody of any of the patient’s property shall comply with any such directions.

#### 86 Appointment of curator for care and administration of patient’s estate

(1) If a judge is satisfied that a person who—

- (a) is detained as a patient in terms of this Act; or
- (b) has been admitted for treatment as a patient in terms of Part VI, VII, VIII;

is incapable of managing his affairs, the judge may, on a chamber application being made by the Prosecutor-General, appoint a curator for the care and administration of the patient’s estate.

(2) If a patient possesses property the estimated value of which does not exceed fifty thousand dollars in respect of assets or capital, or twenty thousand dollars a year in respect of income, a magistrate for the province in which he was living when he entered an institution, special institution or other place in terms of this Act, upon being satisfied that—

- (a) the patient is detained in terms of this Act or has been admitted for treatment as a patient in terms of Part VI, VII or VIII; and
- (b) Patient is incapable of managing his affairs; and
- (c) no curator has been appointed in terms of subsection (1) in respect of the patient’s estate;

may, on application being made by the Prosecutor-General, appoint a curator for the care and administration of the patient's estate.

(3) A judge or magistrate who appoints a curator in terms of subsection (1) or (2) may confer upon the curator authority to do any specific act or exercise any specific power mentioned in section *eighty-eight* or may confer general authority to exercise, on the patient's behalf, all or any of those powers without further application to the judge or magistrate, as the case may be.

(4) If required to do so by the judge or magistrate who appointed him, a curator appointed in terms of this section shall provide security to the satisfaction of—

(a) the Master, where he was appointed by a judge in terms of subsection (1); or

(b) the magistrate who appointed him, where he was appointed in terms of subsection (2);

for the proper administration of the patient's estate and, for that purpose, may furnish a fidelity bond the premiums for which shall be payable out of the estate.

(5) The Minister, with the approval of the Minister responsible for finance, may by statutory instrument amend any amount specific in subsection (2).

### **87 Functions and remuneration of curator**

A curator appointed in terms of section *eighty-four*—

(a) shall have the same duties and obligations as an executor appointed for the administration of a deceased person's estate in relation to the lodging of an inventory or additional inventory of the patient's property and of accounts of his administration, and in respect of any such inventory or account the same stamps and fees shall be payable as in the case of the estate of a deceased person:

Provided that, where the curator was appointed in terms of subsection (2) of section *eighty-six*, the inventories and accounts shall be lodged with the clerk of the magistrates court for the province concerned, and the clerk shall send them without delay to the Master;

(b) shall be allowed the same remuneration, to be fixed by the Master, as in the case of an executor of a deceased person's estate.

### **88 Curator may be authorized or required to do certain things**

A judge or magistrate may authorize or direct a curator appointed in terms of subsection (1) or (2), as the case may be, of section *eighty-six* to do all or any of the following things—

(a) sell, let on hire, exchange, partition, mortgage or dispose of any of the patient's property, and give or receive any money in consideration for any such transaction;

(b) acquire any property in the patient's name;

(c) maintain or improve any of the patient's property or any property of his spouse;

(d) carry on or discontinue any trade or business of the patient;

(e) dissolve any partnership of which the patient is a member;

(f) perform any contract relating to the patient's property which the patient entered into before he became mentally disordered or intellectually handicapped;

(g) exercise any power, including a power to consent, vested in the patient, whether beneficially or as guardian or trustee or otherwise;

(h) settle any of the patient's debts;

(i) provide for the patient's present or future maintenance;

(j) provide for the maintenance, education or advancement of the patient's spouse, children or dependents;

(k) continue such charitable or benevolent acts exercised or promised to be exercised by the patient as the judge or magistrate, as the case may be, considers proper and reasonable;

(l) institute, defend or settle such legal proceedings as are necessary in the interests of the patient or the proper administration of his estate;

(m) make such reports to the Master concerning the patient's estate as the Master or the judge or magistrate, as the case may be, thinks fit;

(n) generally, do any other thing to secure the proper administration of the patient's estate in furtherance of the patient's interests and the legitimate interests of his spouse, children and dependents.

### **89 Commencement and duration of duties of curator and Master**

(1) A curator appointed in terms of section *eighty-six* shall not commence the administration of the patient's estate until—

(a) the Master, in the case of a curator appointed by a judge in terms of subsection (1) of section *eighty-six*, or

(b) the clerk of the court of the magistrate who appointed him, in the case of a curator appointed in terms of subsection (2) of section *eighty-six*;

has given him a certificate that he has been so appointed and is authorized to have the custody and administration of the patient's estate.

(2) The functions of the Master and of a curator appointed in terms of section *eighty-six* shall not cease until the patient is discharged in terms of this Act and it appears from the notice of the discharge that he is capable of managing his own affairs.

(3) Where a patient for whose estate a curator has been appointed is discharged in terms of this Act—

- (a) the person who had charge of the patient immediately before his discharge shall, within forty-eight hours of the discharge, send written notice of the discharge to the Master and to the curator; and
- (b) the curator shall without delay lodge with the Master an account of his administration of the estate and the Master, on being satisfied that the account is in order, may release the curator and direct that the patient be reinvested with control of his estate:

Provided that, where the curator was appointed in terms of subsection (2) of section *eighty-six*, the account shall be lodged with the clerk of the magistrates court for the province concerned, and the clerk shall send it without delay to the Master.

(4) Where a patient for whose estate a curator has been appointed—

- (a) dies intestate; or
- (b) dies testate but there is no executor appointed or willing to act;

the curator shall furnish security to the satisfaction of the Master for the proper administration and distribution of the deceased estate and shall forthwith assume the full duties and responsibilities of an executor.

### **90 Failure of curator to lodge accounts**

(1) Subject to this section, if a curator fails to lodge with the Master or clerk of court, as the case may be, any inventory or account which he is required to lodge under this Part, the Master or the clerk of court or any other person who has an interest in the patient's estate may summon the curator to appear before—

- (a) a judge, where the curator was appointed in terms of subsection (1) of section *eighty-six*; or
- (b) a magistrate for the province concerned, where the curator was appointed in terms of subsection (2) of section *eighty-six*;

to explain why the inventory or account was not lodged as required under this Part.

(2) At least one month before issuing out a summons in terms of subsection (1), the Master, clerk of court or other person referred to in that subsection shall send the curator concerned a written notice requiring him to lodge his inventory or account and informing him that if he fails to do so he will be summoned in terms of that subsection.

(3) A curator who receives a notice under subsection (2) may furnish the Master or the clerk of court, as the case may be, a written statement setting out his reasons for failing to lodge his inventory or account and, if the Master or clerk of court considers such reasons to be sufficient, he may grant the curator a reasonable extension of time for lodging the inventory or account.

(4) Where a curator appears before a judge or magistrate in answer to a summons in terms of subsection (1), the judge or magistrate may—

- (a) direct the curator to lodge his inventory or account within such period as the judge or magistrate may specify; or
- (b) grant the curator a reasonable extension of time for lodging his inventory or account; or
- (c) make such other order in the matter as the judge or magistrate thinks fit.

(5) The costs of any proceedings in terms of this section shall be payable by the curator in default in his individual capacity, and he shall not charge such costs to the patient's estate unless authorized to do so by—

- (a) a judge, where he was appointed in terms of subsection (1) of section *eighty-six*; or
- (b) a magistrate for the province concerned, where he was appointed in terms of subsection (2) of section *eighty-six*.

### **91 Removal of curator from office**

A curator who was appointed—

- (a) by a judge in terms of subsection (1) of section *eighty-six* may be removed from office by a judge; or
- (b) by a magistrate in terms of subsection (2) of section *eighty-six* may be removed from office by a judge or by a magistrate for the province concerned;

if the judge or magistrate is satisfied that—

- (i) the curator has failed to comply with any provision of this Part or with any term or condition of his appointment; or
- (ii) the curator has been guilty of misconduct in his administration of the patient's estate; or
- (iii) for any other reason it is undesirable that the curator should continue to act as curator of the patient's estate.

### **92 Care and administration of estates of patients who are not detained**

(1) If a judge is satisfied that a person is—

- (a) mentally disordered or intellectually handicapped, though he has not been detained in terms of this Act or admitted for treatment as a patient in terms of Part VI, VII or VIII; and

- (b) incapable of managing his affairs, though he is capable of managing himself and is not dangerous to himself or to others;

the judge may, on a chamber application being made by any person, make such order as he thinks fit for the care and administration of that person's estate, including—

- (i) the appointment of a curator; and  
(ii) provision for the maintenance of that person and of his spouse, children and dependents, if any.

(2) If a person possesses property the estimated value of which does not exceed fifty thousand dollars in respect of assets or capital, or twenty thousand dollars a year in respect of income, and a magistrate for the province in which he is living is satisfied that the person is—

- (a) mentally disordered or intellectually handicapped, though he has not been detained in terms of this Act or admitted for treatment as a patient in terms of Part VI, VII or VIII; and  
(b) incapable of managing his affairs, though he is capable of managing himself and is not dangerous to himself or to others;

the magistrate may, on application being made by any person, make such order as he thinks fit for the care and administration of that person's estate, including—

- (i) the appointment of a curator; and  
(ii) provision for the maintenance of that person and of his spouse, children and dependents, if any.

(2) The provisions of this Part relating to curators appointed in terms of section *eighty-six* shall apply, *mutatis mutandis*, to a curator appointed in terms of this section.

(3) The Minister, with the approval of the Minister responsible for finance, may by statutory instrument amend any amount specified in subsection (2).

### **93 Delegation of functions of Master**

(1) With the approval of the Minister responsible for justice, the Master may, by notice in the Gazette, delegate all or any of his functions in terms of this Part to any magistrate or member of the Public Service employed in or at a magistrates court.

(2) A delegation under subsection (1) may be absolute or conditional and may be withdrawn or amended at any time.

(3) A magistrate or member of the Public Service to whom any function has been delegated under subsection (1) may exercise that function, subject to the conditions, if any, of its delegation, as if he were the Master.

### **94 Recognition of external curators**

(1) The Minister may, by notice in the Gazette, declare that persons appointed in any specified state or territory to administer the estates of mentally disordered or intellectually handicapped persons shall be recognized in Zimbabwe, subject to my terms or conditions specified in the notice, as if they were curators appointed in terms of this Part.

(2) Subject to any terms or conditions specified in a notice published in terms of subsection (1), any person appointed in a state or territory specified in the notice to administer the estate of a mentally disordered or intellectually handicapped person—

- (a) may exercise in Zimbabwe the powers mentioned in section *eighty-eight*, or such of those powers as the Master may in each case consider it necessary or expedient for him to exercise; and  
(b) shall be subject to the same duties as a curator appointed in terms of subsection (1) of section *eighty-six*.

## **PART XII**

### **ADMISSION OF PATIENTS FROM OTHER STATES OR TERRITORIES**

### **95 Interpretation in Part XII**

In this Part—

“designated country” means a state or territory which the Minister has designated in terms of section *ninety-six*.

### **96 Designated countries**

(1) The Minister may, by order in the Gazette, declare any foreign state or territory to be a designated country for the purposes of this Part.

(2) In an order under subsection (1), the Minister may declare that this Part shall apply in relation to the designated country concerned subject to specified restrictions or modifications, and this Part shall apply accordingly in relation to that designated country.

### **97 Admission of patients from designated countries**

(1) Where a person has been admitted into Zimbabwe from a designated country, with the consent of the Minister, by virtue of a warrant which—

- (a) has been issued by a person duly authorized in that designated country to issue such warrants; and

(b) states that the person so admitted is mentally disordered or intellectually handicapped and requires detention and treatment in an institution;

that person's conveyance to and detention and treatment in an institution in Zimbabwe shall be lawful to the extent that the conveyance, detention and treatment takes place not more than two months from the date of the warrant.

(2) Where a patient has been received into an institution under a warrant referred to in subsection (1), the superintendent of the institution shall forthwith send the warrant, together with the supporting documents, to the Secretary who shall send them to the Prosecutor-General for submission to a judge in chambers, and thereafter this Act shall apply in relation to the patient as if he were a person in respect of whom a reception order has been issued.

### **98 Detention of patients from designated countries who were mentally disordered when they committed offences**

(1) Subject to this section, a person who has been ordered to be detained in a designated country following a finding by a court in that country that he was mentally disordered or intellectually handicapped when he committed an offence may be admitted into and detained and treated in Zimbabwe under a warrant issued by such authority in the designated country as may be accepted by the Minister.

(2) A person admitted into Zimbabwe in terms of subsection (1) shall be detained in such place as the Minister may fix until a competent authority in the designated country from which he was sent otherwise determines, when he shall be sent back to that designated country.

(3) A certificate signed by the Minister and declaring that from documents laid before him it appears that the person named in the certificate has been ordered to be detained by a competent authority in a designated country shall be accepted by any court in Zimbabwe, upon its production by any person, as prima facie proof that the first-mentioned person is lawfully under detention in terms of this section.

### **99 Return to designated countries of persons liable to be detained in respect of offences**

(1) In this section—

“patient who is liable to be detained in respect of an offence” means a person who—

- (a) is detained in custody as a result of having been found unfit through mental disorder or intellectual handicap to be tried for an offence with which he was charged; or
- (b) has been convicted of an offence and afterwards found to be mentally disordered or intellectually handicapped.

(2) Upon the recovery or discharge of a patient who is liable to be detained in respect of an offence and who was admitted to an institution under a warrant referred to in section *ninety-seven*, he shall be returned as a prisoner to the designated country from which he was removed to Zimbabwe.

### **100 Application of Cap. 7:14**

Nothing in this Part shall be construed as limiting the application of subsections (3) and (4) of section 11 of the Transfer of Offenders Act [*Chapter 7:14*].

## **PART XIII**

### **OFFENCES AND PENALTIES**

### **101 Detaining patients except in accordance with this Act**

Any person who, except in accordance with this Act—

(a) receives or detains a patient in an institution or special institution: or

(b) for payment or reward, takes charge of, receives for boarding purposes or detains a patient in any place;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### **102 False statements**

Any person who—

(a) makes a false entry or statement of a material fact in any document or entry made or prepared for the purposes of this Act, knowing the entry or statement is false or not having reasonable grounds for believing it to be true; or

(b) with intent to deceive, makes use of any false entry or statement referred to in paragraph (a);

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### **103 Ill-treatment of patients**

Any person who—

(a) is employed in or at any institution, special institution or other place in which a patient is received or detained in terms of this Act; or

(b) has the guardianship, custody or care of a patient whether by virtue of this Act or through any contract or any tie of relationship by marriage or otherwise; and who ill-treats or wilfully neglects the patient shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

#### **104 Assisting patients to absent themselves without leave, etc.**

Any person who—

- (a) induces or knowingly assists another person who is detained or liable to be detained or is subject to control in terms of this Act to escape from such detention or control or to absent himself without leave; or
- (b) knowing or having reason to believe that another person is a patient who has escaped from detention or control in terms of this Act or has absented himself from such detention or control without leave—
  - (i) harbours that other person; or
  - (ii) gives that other person any assistance with intent to prevent, hinder or interfere with his return to the institution or other place where he ought to be;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

#### **105 Obstruction**

(1) Any person who, without reasonable cause—

- (a) refuses to allow the inspection of any premises for the purposes of this Act; or
- (b) refuses to allow the visiting, interviewing or examination of any person by a person authorized to do so by or under this Act; or
- (c) hinders or obstructs any person in the exercise of his functions in terms of this Act;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) Without prejudice to the generality of subsection (1), a person who insists on being present when required to withdraw by a person authorized by or under this Act to interview or examine someone in private shall be deemed to hinder the second-mentioned person.

#### **106 Unlawful sexual intercourse with patients**

(1) Subject to this section, any person who—

- (a) being employed in or at an institution, special institution or other place where a patient is detained or receiving treatment in terms of this Act, has sexual intercourse with the patient; or
- (b) having the custody, care or charge of any patient in terms of this Act, has sexual intercourse with the patient;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) For the purposes of subsection (1), a patient shall be deemed to be detained in an institution, special institution or other place or to be in custody, care or charge, even though he may have escaped therefrom or be absent therefrom with or without leave, until he is duly discharged or ceases to be in such custody, care or charge in terms of this Act.

(3) It shall be a defence to a charge under subsection (1) for the accused person to prove that, when the alleged offence was committed—

- (a) he was the spouse of the patient concerned; or
- (b) he did not know and had no reason to believe or suspect that the patient concerned was detained or receiving treatment in the institution, special institution or place concerned or that the patient was in his custody, care or charge, as the case may be.

(4) The consent of the patient concerned shall not be a defence to a charge under subsection (1).

### **PART XIV**

#### **GENERAL**

#### **107 Declaration of place in lieu of special institution**

(1) If the Minister is of the opinion that there is no hospital or other place that can conveniently be declared to be a special institution for the purposes of this Act, he may, with the approval of the Minister responsible for justice, by notice in the Gazette, declare that any institution or other place specified in the notice may be used for the detention of patients who should, in terms of this Act, be detained in a special institution.

(2) Notwithstanding any other provision of this Act, persons who are required to be received and detained in a special institution may be received and detained in a place specified in a notice under subsection (1) in all respects as if that place were a special institution.

### **108 Designated persons**

(1) At least once a year the Secretary shall publish in the Gazette a list of all the names of medical practitioners, psychiatric nurses, social workers and clinical psychologists who are recognized by him as having knowledge of psychiatry or experience in dealing with mentally disordered or intellectually handicapped persons.

(2) The Secretary may at any time amend a list of names published in terms of subsection (1) by—

- (a) adding the name of a person recognized by him since the list was published; or
- (b) deleting the name of a person who has died since the list was published or who has ceased to be qualified for inclusion on the list.

### **109 Saving of power of High Court to declare persons mentally ill and to appoint curators**

Nothing in this Act shall be construed as limiting any power which the High Court may have under any other law to declare any person to be mentally disordered or intellectually handicapped or to be incapable of managing his own affairs, or to appoint a curator of the person or property of any patient:

Provided that, where any person applies to the High Court for the appointment of a curator of the person or property of any patient, fourteen days' notice of the application shall be given to the Prosecutor-General.

### **110 Information to be given to detained patients and patients in single care**

(1) The superintendent of any institution, special institution or other place in which a patient is detained in terms of this Act shall take such steps as are practicable to ensure that the patient understands—

- (a) under which provision of this Act he is for the time being detained and the effect of that provision; and
- (b) how to exercise his right, if any, of applying or appealing to the Mental Health Review Tribunal in respect of his detention.

(2) Subsection (1) shall apply, *mutatis mutandis*, to any person into whose charge a patient is received in single care as if the patient were detained in an institution and that person were the superintendent of it.

### **110A Application for sterilisation of mentally disordered or intellectually handicapped female person by parent, guardian, spouse etc.**

(1) The parent, guardian, spouse or any other person capable in law of giving consent on behalf of a mentally disordered or intellectually handicapped female person may apply to the High Court for an order authorising her sterilisation.

(2) If the High Court is satisfied that—

- (a) on the evidence of at least two medical practitioners, a female person is mentally disordered or intellectually handicapped, and that it is in her best interests that she should be sterilised; and
- (b) her parent, guardian, spouse or any other person capable in law of giving consent on her behalf has consented to her sterilisation;

the High Court may order that she should be sterilised.

(3) Except as authorised by this section, no mentally disordered or intellectually handicapped female person shall be sterilised.

[Section inserted by Act 23 of 2004]

### **111 Limitation of actions by patients**

(1) A person who in good faith and with reasonable care performs any act in compliance or intended compliance with any provision of this Act shall not be civilly or criminally liable in respect of that act.

(2) In any proceedings against a person in respect of an act referred to in subsection (1), the burden of proving that he acted without good faith or without reasonable care shall lie upon the person who institutes the proceedings.

(3) Any proceedings, whether civil or criminal, taken against a person in respect of an act referred to in subsection (1) may, upon application to the court in which they are taken, be stayed if the court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the proceedings are frivolous or vexatious.

(4) No proceedings, whether civil or criminal, in respect of an act referred to in subsection (1) shall be commenced more than twelve months after the act complained of or, where the cause of action continues, more than twelve months after it ceases:

Provided that, in estimating such a twelve-month period, no account shall be taken of any time during which the person wronged was lawfully under detention as a patient or was unaware of the facts which constitute the cause of action.

(5) Nothing in this section shall be construed as depriving any person of any defence which he would have had independently of this section.

### **112 Examination of patient in connection with prosecution**

Where it is necessary for a patient to be examined in connection with a prosecution under this Act, the examination shall where possible be held at the institution, special institution or other place where the patient is detained.

### **113 Mechanical means of restraint**

(1) No person shall apply mechanical means of bodily restraint to a patient who is detained under this Act or in single care, except such mechanical means as are prescribed or approved by the Minister.

(2) Mechanical means of bodily restraint shall be applied to a patient who is detained under this Act or in single care only if the restraint is necessary for the purpose of surgical or medical treatment or to prevent him from injuring himself or others.

(3) In every case in which mechanical means of bodily restraint are applied to a detained patient or a patient in single care, the superintendent of the institution, special institution or other place in which the patient is detained or, in the case of a patient in single care, his medical attendant, shall—

(a) keep a daily register in which he shall describe the means of restraint employed and shall state—

(i) the reasons why such means of restraint were necessary; and

(ii) the period for which such means of restraint were applied;

and

(b) at the end of every quarter, send the Secretary a copy of the register kept in terms of paragraph (a).

### **114 Seclusion of patients**

(1) A patient who is detained under this Act or in single care shall not be kept in seclusion except upon the order of the superintendent of the institution or special institution or other place in which he is detained or, in the case of a patient in single care, his medical attendant.

(2) In every case in which a detained patient is kept in seclusion, the superintendent of the institution, special institution or other place in which the patient is detained or, in the case of a patient in single care, his medical attendant, shall—

(a) keep a daily register in which he shall describe the method of seclusion employed and shall state—

(i) the reasons why such seclusion was necessary; and

(ii) the period for which the patient was kept in seclusion;

and

(b) at the end of every quarter, send the Secretary a copy of the register kept in terms of paragraph (a).

(3) A patient shall be deemed to be kept in seclusion if at any time between eight o'clock in the morning and seven o'clock in the evening he is isolated in a room the door of which is fastened or held so that he is unable to leave the room at will, but not if he is isolated in a room in which the lower half of the door is so fastened or held but the upper half is left open.

### **115 Inquiries**

(1) A magistrate or the Secretary or any person appointed by the High Court or the Minister may hold an inquiry for the purposes of this Act or in respect of any patient.

(2) A person holding an inquiry in terms of subsection (1) may, if he considers it necessary to do so, summon any person to appear before him to testify or produce any book or document concerning any matter in relation to which the inquiry is being held.

(3) Persons appearing before an inquiry in terms of this section may be examined on oath, which oath the person holding the inquiry is hereby empowered to administer.

(4) Any person who, without lawful excuse—

(a) at or in the course of an inquiry in terms of this section shows disrespect in speech or manner to or with reference to the inquiry or the person holding the inquiry; or

(b) having been summoned to appear before the person holding the inquiry, fails to attend or, having attended, refuses to be sworn or fails to remain in attendance until excused by the person holding the inquiry; or

(c) causes an obstruction or disturbance in the course of an inquiry in terms of this section; or

(d) having been sworn—

(i) refuses to answer any question lawfully put to him; or

(ii) makes a statement material to the inquiry knowing the statement to be false or not knowing or believing it to be true;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(5) Any person summoned to appear before a person holding an inquiry in terms of this section shall be entitled to be paid such amount to defray his expenses as may be prescribed.

(6) Nothing in this section shall be construed as limiting the power of the Mental Health Review Tribunal to institute an inquiry into any matter in terms of this Act.

### **116 Execution of orders**

(1) Any order issued by a magistrate or any other person under this Act for the detention or removal of a patient may be executed by the person to whom it is addressed or by a police officer.

(2) When an order referred to in subsection (1) relates to a person who is not under detention, it may be executed in the same manner as a warrant for the arrest of a person charged with an offence, and every police officer shall assist in executing it.

### **117 Escape of patients**

(1) Subject to subsection (3), if a patient escapes while being conveyed to or detained in an institution, special institution or other place under this Act, he may be retaken within twenty-eight days after his escape by—

- (a) the superintendent of the institution, special institution or other place; or
- (b) any person employed in or at the institution, special institution or other place; or
- (c) any person assisting a person referred to in paragraph (a) or (b); or
- (d) in the case of a patient who was being conveyed to an institution, special institution or other place, his appointed escort; or
- (e) any police officer;

and, upon being retaken within that period, the patient shall forthwith be conveyed to and received and detained in the institution, special institution or other place.

(2) Subject to subsection (3), if a patient who escapes as mentioned in, subsection (1) is not retaken within twenty-eight days after his escape, he shall formally be discharged from the place to which he was being conveyed or in which he was being detained, as the case may be, at the time of his escape, and he shall not be readmitted to that place unless a new order is issued under this Act.

(3) A patient who escapes while being conveyed to or detained in an institution, special institution or other place under an order issued in terms of section *twenty-seven, twenty-eight, twenty-nine* or *thirty* or Part IV may be retaken and conveyed to and detained in the institution, special institution or other place concerned at any time after his escape.

### **118 Cost of maintaining patients at State institutions**

(1) Subject to this section, the costs and expenses of detaining and additionally, or alternatively, treating a patient in terms of this Act in an institution, special institution or other place which is maintained by the State shall be defrayed from a fund to be established for the purpose in terms of section 30 of the Audit and Exchequer Act [*Chapter 22:03*].

(2) The fund referred to in subsection (1) shall be administered by the Secretary and shall consist of moneys appropriated for the purpose by Act of Parliament.

(3) Nothing in this section shall be construed as preventing the State from charging fees for the detention or treatment of any patient, and any such fee may be recovered from the patient's estate or from any person legally liable to contribute towards the patient's maintenance.

### **119 Medical certificates and reports to be evidence of certain facts**

A medical certificate or medical report given or made for the purposes of this Act shall be admissible any proceedings before any court on its production by any person and shall be prima facie evidence of—

- (a) any facts stated in the certificate or report, so far as they are within the knowledge of the person giving the certificate or making the report; and
- (b) any opinion expressed in the certificate or report by the person giving or making it.

### **120 Visiting of patients**

Any person detained in an institution, special institution or other place in terms of this Act may be visited at any time by the Secretary or a member of the Mental Health Review Tribunal or by any person whom the Secretary or the Tribunal may specially or generally appoint in writing for that purpose, and any such visit may be made without prior notice.

### **121 Examination of patients by students**

The medical superintendent of an institution or special institution may permit any medical practitioner, psychiatric nurse practitioner, medical student or student nurse undergoing a course of training in psychiatry to examine, for the purposes of that course, any patient detained in the institution or special institution concerned:

Provided that—

- (i) the medical superintendent shall not give such permission unless he is authorized to do so by the Minister;
- (ii) in the case of a medical student or student nurse, no such examination shall be conducted except under the supervision of a medical practitioner or psychiatric nurse practitioner approved by the medical superintendent;
- (iii) the medical superintendent's permission shall not be construed as permitting the medical practitioner, psychiatric nurse practitioner, medical student or student nurse to treat the patient;
- (iv) no such examination shall be conducted if the patient, where he is capable of expressing volition, or the patient's guardian, curator, spouse, close relative or friend, lodges an objection to any such examination.

## **122 Minister may authorize removal of patients from Zimbabwe**

(1) If the Minister, after consultation with the chairman of the Mental Health Review Tribunal, is satisfied that—

- (a) a patient should be removed from Zimbabwe to another country; and
- (b) the patient's removal is likely to be for his benefit; and
- (c) proper arrangements have been made for the patient's removal and subsequent care and treatment;

the Minister may, by warrant in the prescribed form, direct that the patient be delivered to a person named in the warrant for the purpose of his removal from Zimbabwe to the country named in the warrant:

Provided that a warrant shall not authorize the removal of a patient detained under Part III or IV unless he has been discharged in terms of that Part.

(2) A warrant under subsection (1) shall be authority for the removal from Zimbabwe of the person named in the warrant.

## **123 Patients passing through Zimbabwe**

(1) Where a person has been declared in a country other than Zimbabwe to be mentally disordered or intellectually handicapped and he is brought into Zimbabwe in custody under a warrant or order in the course of his transfer from the first-mentioned country to another country for care and treatment, he shall be deemed to be in lawful custody while he is in Zimbabwe and, if he escapes from that custody, he may be arrested without warrant by any police officer who shall return him forthwith to the custody from which he escaped.

(2) A warrant or order referred to in subsection (1) shall be a document which purports—

- (a) to have been issued by a competent authority of the country from which the person named in the document is to be removed; and
- (b) to authorize that person's removal to a specified country, access to which is ordinarily or conveniently obtained by passage through Zimbabwe.

(3) If any question arises as to whether a warrant or order referred to in subsection (1) was issued by a competent authority or whether it authorizes the removal referred to in subsection (2), the Minister's certificate shall be accepted in all courts as prima facie proof of the matter.

## **124 Dissolution of partnership where member is mentally disordered or intellectually handicapped**

Where a member of a partnership is—

- (a) declared by the High Court to be mentally disordered or intellectually handicapped; or
- (b) detained as a patient in terms of this Act;

the High Court may order the dissolution of the partnership and additionally, or alternatively, make such other order regarding the partnership as it thinks fit in the circumstances.

## **125 Regulations**

(1) The Minister may make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the accommodation, facilities, equipment and staff to be provided in or at institutions, special institutions and other places where patients are detained or treated, including nursery and other facilities for the care of patients' children;
- (b) the inspection of institutions, special institutions and other places in which patients are detained or treated;
- (c) the admission and discharge of patients;
- (d) the removal or transfer, including the temporary transfer, of patients from one institution, special institution or place to another institution, special institution or place;
- (e) the books to be kept in institutions, special institutions and other places where patients are detained or treated, the entries to be made in such books and the accounts, reports, returns, extracts, copies, statements, notices, documents and information to be sent to the Minister, the Secretary, the Mental Health Review Tribunal or any other authority or person;
- (f) the forms to be used for the purposes of this Act;
- (g) the management of patients in single care;
- (h) the control of electro-convulsive therapy, leucotomy and other operations and medical or therapeutic treatment which, in the Minister's opinion, require special control;
- (i) mechanical means of restraint;
- (j) the visiting of patients;
- (k) the functions of voluntary organizations relating to mental health services and the welfare of patients;
- (l) the provision by local authorities of accommodation for the housing and care of patients;
- (m) the provision of community psychiatric services, after-care and follow-up services;

- (n) applications to the Mental Health Review Tribunal;
- (o) the holding of inquiries under this Act;
- (p) the payment of allowances to persons who amend inquiries under this Act and hearings of the Mental Health Review Tribunal;
- (q) the convening of meetings referred to in subsection (1) of section *seventy-four* and the procedure to be adopted at such meetings.

(3) The Minister shall not make regulations for a purpose referred to in paragraph (1) of subsection (2) except with the approval of the Minister responsible for local government.

### **126 Construction of references to mentally disordered or defective persons**

Any reference in any other enactment to a mentally disordered or defective person shall be construed, unless inconsistent with the context, as a reference to a mentally disordered or intellectually handicapped person as defined in section *two*.

### **127 Repeal of Cap. 15:06 and savings**

- (1) The Mental Health Act [*Chapter 15:06*] is repealed.
- (2) Notwithstanding the repeal of the Mental Health Act [*Chapter 15:06*]—
  - (a) any application or order made or issued under that Act shall be treated as though it had been made under the relevant provision of this Act and may be proceeded with as if it had been so made;
  - (b) any warrant or order for the detention of any person in terms of that Act and in force immediately before the date of commencement of this Act shall be deemed to have been issued under the corresponding provision of this Act and shall remain in force until set aside or varied under this Act;
  - (c) any board established under section 50 of that Act shall be deemed to be a mental hospital board established under this Act, and—
    - (i) the members of that board shall continue as members in accordance with this Act; and
    - (ii) any report or resolution of or other action taken by that board shall have effect as if it had been made or taken in terms of this Act;
  - (d) any curator appointed under that Act who had not been released from his appointment before the date of commencement of this Act shall be deemed to have been appointed under the corresponding provision of this Act with the same functions as were conferred or imposed upon him under that Act;
  - (e) any inquiry or other proceeding commenced under that Act which had not been completed on the date of commencement of this Act shall be continued under the corresponding provision of this Act as though it had commenced under that provision;
  - (f) the President shall continue to exercise his powers under that Act in relation to any matter which had been submitted to him for his decision under that Act before the date of commencement of this Act but which had not been decided by him on that date, and the patient concerned shall be detained, discharged or otherwise dealt with as if his decision in the matter had been given before that date;
  - (g) any regulations made, notice published, decision taken or other thing made, done or commenced before the date of commencement of this Act which had effect immediately before that date shall continue to have, or to be capable of acquiring, the same effect as if it had been made, done or commenced, as the case may be, under the corresponding provision of this Act.