



รายการอ้างอิง

ภาษาไทย

- กมลชัย รัตนสกาวงศ์. ความยินยอมในกฎหมายอาญา. วิทยานิพนธ์ปริญญาโทบัณฑิต
คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2523.
- กฎหมายโปลิส 53 ข้อ ซึ่งจะรักษาน้ำที่ในพระนครแลนอกพระนคร. ราชกิจจานุเบกษา 2418.
กุศล บุญยืน. คำอธิบายกฎหมายวิธีพิจารณาความอาญา. กรุงเทพมหานคร : บริษัท
ประยูรวงศ์จำกัด, 2533.
- เกษม ตันติผลาชีวะ. ตำราจิตเวชศาสตร์. กรุงเทพมหานคร : สำนักพิมพ์มหาวิทยาลัย
ธรรมศาสตร์, 2536.
- เกียรติขจร วัจนะสวัสดิ์. คำอธิบายกฎหมายอาญา ภาค 1. กรุงเทพมหานคร : สำนักพิมพ์
มหาวิทยาลัยธรรมศาสตร์ 2536.
- คณิต ณ นคร. กฎหมายอาญา ภาคความผิด. กรุงเทพมหานคร : สำนักพิมพ์มหาวิทยาลัย
ธรรมศาสตร์, 2537.
- คณิง ภาไชย. กฎหมายวิธีพิจารณาความอาญา เล่ม 1. กรุงเทพมหานคร : สำนักพิมพ์
มหาวิทยาลัยธรรมศาสตร์, 2536
- จรัส สุวรรณมาลา. ผลประโยชน์สาธารณะและการกำหนดนโยบายสาธารณะ : แนวคิดทาง
รัฐศาสตร์และเศรษฐศาสตร์. กรุงเทพมหานคร : โรงพิมพ์มหาวิทยาลัยธรรมศาสตร์,
2531.
- จรรยา สุภาพ. หลักรัฐศาสตร์ ภาคพิสดาร แนวทฤษฎี และประยุกต์. กรุงเทพมหานคร :
สำนักพิมพ์ไทยวัฒนาพานิช, 2518.
- จำลอง ดิษยวณิช. จิตเวชศาสตร์. พิมพ์ครั้งที่ 2. เชียงใหม่ : โรงพิมพ์พระสิงห์การพิมพ์,
2522.
- จิตติ ดิงศภัทย์. กฎหมายแพ่งและพาณิชย์ ว่าด้วยบุคคล. กรุงเทพมหานคร : สำนักพิมพ์
มหาวิทยาลัยธรรมศาสตร์, 2530.

- จิตติ ทิงศภัทย์. กฎหมายอาญา ภาค 1. กรุงเทพมหานคร : บริษัทสยามพรีนติ้ง กรุ๊ปจำกัด, 2536.
- . ความยินยอมไม่ทำให้เป็นความผิด. วารสารกฎหมาย 3 (สิงหาคม 2520) : 52-57.
- เชียร สิริยานนท์. บทความเกี่ยวกับนิติจิตเวช. ม.ป.ป. 2520.
- ธีระ ลีลานันทกิจและชุตติย์ ปานปรีชา. ตำราจิตเวชศาสตร์. พิมพ์ครั้งที่ 2. กรุงเทพมหานคร : สำนักพิมพ์มหาวิทยาลัยธรรมศาสตร์, 2536.
- ธำรง ทศนาญชลี. "รายงานการวิจัยเรื่อง การศึกษาปัจจัยทางจิตวิทยา สังคม ผู้กระทำผิดคดีฆ่าคนตาย." พฤษภาคม, 2528.
- พัฒนไชย ยอดพุง. วิธีการเพื่อความปลอดภัยตามประมวลกฎหมายอาญา มาตรา 48. วิทยานิพนธ์ปริญญาโทบัณฑิต จุฬาลงกรณ์มหาวิทยาลัย, 2533.
- ไพรัตน์ พงกษชาติคุณากร. จิตเวชศาสตร์. พิมพ์ครั้งที่ 2. เชียงใหม่ : โครงการคณะแพทยศาสตร์ มหาวิทยาลัยเชียงใหม่, 2534.
- บรรลือ เรื่องตระกูล. ระเบียบการตำรวจเกี่ยวกับคดี. กรุงเทพมหานคร : โรงพิมพ์มหาดไทย, 2497.
- "ประกาศให้ผู้เป็นเจ้าของบ้ำ ให้ระวางคนบ้ำ จ.ศ.1221" พระราชบัญญัติและประกาศต่าง ๆ ในรัชกาลที่ 4. พระนคร : โรงพิมพ์อักษรการพิมพ์, รัตนโกสินทร์ ศ.ก. 110.
- ประทักษ์ ลิขิตเลอสรวง. นิติจิตเวชศาสตร์ 2. กรุงเทพมหานคร : สำนักงานพิมพ์มหาวิทยาลัยธรรมศาสตร์, 2536.
- ประทักษ์ ลิขิตเลอสรวงและสาธิตา ใควบุญงาม. หนึ่งศตวรรษนิติจิตเวช : อดีตถึงปัจจุบันใน ที่ระลึกครบรอบ 20 ปี ของโรงพยาบาลนิติจิตเวช. กรุงเทพมหานคร : ปิยะธนวิรัชการพิมพ์, 2535.
- ประธาน วัฒนวานิชย์. ระบบความยุติธรรมทางอาญา : แนวความคิดเกี่ยวกับการควบคุมอาชญากรรมและกระบวนการนิติธรรม. วารสารนิติศาสตร์ 9 (กันยายน - พฤศจิกายน 2520) : 142-171.
- ประพิน ปรัชญาภรณ์. ความยินยอมของผู้เสียหายในการกระทำผิดอาญา. วิทยานิพนธ์ปริญญาโทบัณฑิต จุฬาลงกรณ์มหาวิทยาลัย, 2522.
- วิชัย อริยนันทกะ. รัฐ สังคม เสรีนิยมและกฎหมาย. บทบัณฑิตย 47 (2534) : 111-116.

- วิฑูรย์ อึ้งประพันธ์. นิติเวชศาสตร์ ฉบับกฎหมายกับเวชปฏิบัติ. กรุงเทพมหานคร : เรือนแก้ว
การพิมพ์, 2530.
- แวว ยอดพวง. คู่มือสอบสวนอำนาจหน้าที่ของพนักงานฝ่ายปกครองและตำรวจตามประมวล
กฎหมายวิธีพิจารณาความอาญา. กรุงเทพฯ : สำนักพิมพ์นิติบรรณการ, 2515.
- สมยศ เชื้อไทย. หลักกฎหมายมหาชนเบื้องต้น. กรุงเทพมหานคร : สำนักพิมพ์วิญญูชน, 2536.
- สุวัฒนา อารีพรค. ความผิดปกติทางจิต. กรุงเทพมหานคร : โรงพิมพ์จุฬาลงกรณ์มหาวิทยาลัย,
2524.
- สุวันชัย ใจหาญ. คำอธิบายประมวลกฎหมายวิธีพิจารณาความอาญา เล่ม 2. กรุงเทพมหานคร
: โรงพิมพ์มิตรสยาม, 2536.
- อนุมิตี ใจสมุทร. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์บรรพ 1 ว่าด้วยบุคคล. พระนคร :
โรงพิมพ์การศึกษาบรรณการ, 2515.
- . คำอธิบายกฎหมายวิธีพิจารณาความอาญา. พระนคร : สำนักพิมพ์นิติบรรณการ,
2514.
- อฉนพ ชูบำรุง. ทฤษฎีอาชญาวิทยา. กรุงเทพมหานคร : OS. Printing House, 2527.
- อุกฤษ มงคลนาวินและประสิทธิ์ โฆวิไลกุล. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ ว่าด้วย
บุคคล. กรุงเทพมหานคร : นิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, 2529.
- เอม อินทกรณ์. จิตเวชศาสตร์และกฎหมายอาญา. กรุงเทพมหานคร : คณะแพทยศาสตร์
จุฬาลงกรณ์มหาวิทยาลัย, 2533. (อัครสำเนา)
- เอช เอ กูต์ และวิจิตร ลุฬิตานนท์. กฎหมายแพ่งและพาณิชย์ ว่าด้วยบุคคล. พระนคร :
มหาวิทยาลัยธรรมศาสตร์และการเมือง, 2478.

ภาษาอังกฤษ

- Appelbaum, Paul S. Psychiatry and the law. Maryland : Williams &
Wilkins, 1991.
- Bluglass, Robert and Bowden, Paul. Principles and Practice of
Forensic Psychiatry. London : Longman Group Ltd, 1990.

- Christoffel, Tom. Health and the law. New York : The Free Press, 1982.
- Cohen, Ronald J. Legal Guidebook in Mental Health. New York : The Free Press, 1982.
- Curran, W.J. and Harding, T.W. The Law and Mental Health : Harmonizing Objectives. Geneva : World Health Organization, 1978.
- Diamond, Bernard L. "Forensic Psychiatry," in Review of General Psychiatry. California : Lange Medical Publication, 1984.
- Diamond, Bridght. Filling in the Statutory Gaps with the Common Law. New Law Journal 17 (August 1984) : 693-696.
- Harding, T.W. and Graves, C.L. Human Rights and Mental Patients in Japan. Geneva : International Commission of Jurists, 1985.
- Hoggett, Brenda. Mental Health Law. London : Sweet & Maxwell, 1990.
- Levin, RB and Hill EH. Review of Clinical Psychiatry and the Law. Washington D.C. : American Psychiatry Press, 1992.
- Kaplan, Harold I. and Sadock, Benjamin J. Modern Synopsis of Comprehensive Textbook of Psychiatry. 6 th. ed. Philadelphia : Williams & Wilkins, 1995.
- Kittrie, Nicholas N. The Right to be Different Deviance and Enforced Therapy. New York : The Johns Hopking Press, 1971.
- Marc Ancel. Social Defence. London : Routledge & Keagan Poul, 1965.
- Mental health. In Halsbury Laws of England. Volume 30 4 th. ed. London : Butterworths, 1980.
- Teplin, Linda A. Mental Health and Criminal Justice. California : Sage Publications, 1984.
- The Mental Health Act. in Mental Hygiene Law. New York : New York Consolidated Laws Service, 1992.

The Mental Health Division of the Health Service, The Mental Health Law. Bureau of the Ministry of Health and Welfare of Japan, 1988.

Wagenfeld, Morton O. Public Mental Health. California : Sage Publication, 1982.



ภาคผนวก

ภาคผนวก ก

พระราชบัญญัติสุขภาพจิตของประเทศไทย

The Mental Health Act 1983

Application of Act: "mental disorder"

1.-(1) The provisions of this Act shall have effect with respect to the reception, care and treatment of mentally disordered patients, the management of their property and other related matters.

(2) In this Act-

"mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind and "mentally disordered" shall be construed accordingly;

"severe mental impairment" means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned and "severely mentally impaired" shall be construed accordingly.

"mental impairment" means a state of arrested or incomplete development of mind (not amounting to severe mental impairment) which includes significant impairment of intelligence and soical functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned and "mentally impaired" shall be construed accordingly;

"psychopathic disorder" means a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned; and other expressions shall have the meanings assigned to them in section 145 below.

- (3) Nothing in subsection (2) above shall be construed as implying that a person may be dealt with under this Act as suffering from mental disorder, or from any form of mental disorder described in this section, by reason only of promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs.

Procedure for hospital admission

Admission for assessment

2.-(1) A patient may be admitted to a hospital and detained there for the period allowed by subsection (4) below in pursuance of an application (in this Act referred to as "an application for admission for assessment") made in accordance with subsections (2) and (3) below.

(2) An application for admission for assessment may be made in respect of a patient on the grounds that-

- (a) he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and

(b) he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

(3) An application for admission for assessment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with.

(4) Subject to the provisions of section 29 (4) below, a patient admitted to hospital in pursuance of an application for admission for assessment may be detained for a period not exceeding 28 days beginning with the day on which he is admitted, but shall not be detained after the expiration of that period unless before it has expired he has become liable to be detained by virtue of a subsequent application, order or direction under the following provisions of this Act.

Admission for treatment

3.-(1) A patient may be admitted to a hospital and detained there for the period allowed by the following provisions of this Act in pursuance of an application (in this Act referred to as "an application for admission for treatment") made in accordance with this sections.

(2) An application for admission for treatment may be made in respect of a patient on the grounds that-

(a) he is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment and his mental disorder is of a nature or degree which

makes it appropriate for him to receive medical treatment in a hospital; and

- (b) in the case of psychopathic disorder or mental impairment, such treatment is likely to alleviate or prevent a deterioration of his condition; and
- (c) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this section.

(3) An application for admission for treatment shall be founded on the written recommendations in the prescribed form of two recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with; and each such recommendation shall include-

- (a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in paragraphs (a) and (b) of that subsection; and
- (b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (c) of that subsection, specifying whether other methods of dealing with the patient are available and, if so why they are not appropriate.

Admission for assessment in cases of emergency

4.-(1) In any case of urgent necessity, an application for admission for assessment may be made in respect of a patient in accordance with the following provisions of this section, and any

application so made is in this Act referred to as "an emergency application."

(2) An emergency application may be made either by an approved social worker or by the nearest relative of the patient; and every such application shall include a statement that it is of urgent necessity for the patient to be admitted and detained under section 2 above, and that compliance with the provisions of this Part of this Act relating to applications under that section would involve undesirable delay.

(3) An emergency application shall be sufficient in the first instance is founded on one of the medical recommendations required by section 2 above, given, if practicable, by a practitioner who has previous acquaintance with the patient and otherwise complying with the requirements of section 12 below so far as applicable to a single recommendation, and verifying the statement referred to in subsection (2) above.

(4) An emergency application shall cease to have effect on the expiration of a period of 72 hours from the time when the patient is admitted to the hospital unless-

- (a) the second medical recommendation required by section 2 above is given and received by the managers within that period; and
- (b) that recommendation and the recommendation referred to in subsection (3) above together comply with all the requirements of section 12 below (other than the requirement as to the time of signature of the second recommendation).

(5) In relation to an emergency application, section 11 below shall have effect as if in subsection (5) of that section for words "the period of 14 days ending with the date of the application" there were substituted the words "the previous 24 hours."

Application in respect of patient already in hospital

5.-(1) An application for the admission of a patient to a hospital may be made under this Part of this Act notwithstanding that the patient is already an in-patient in that hospital or, in the case of an application for admission for treatment that the patient is for the time being liable to be detained in the hospital in pursuance of an application for admission for assessment; and where an application is so made the patient shall be treated for the purposes of this Part of this Act as if he had been admitted to the hospital at the time when that application was received by the managers.

(2) If, in the case of a patient who is an in-patient in a hospital, it appears to the registered medical practitioner in charge of the treatment of the patient that application ought to be made under this Part of this Act for the admission of the patient to hospital, he may furnish to the managers a report in writing to that effect; and in any such case the patient may be detained in the hospital for a period of 72 hours from the time when the report is so furnished.

(3) The registered medical practitioner in charge of the treatment of a patient in a hospital may nominate one (but not more than one) other registered medical practitioner on the staff that hospital to act for him under subsection (2) above in his absence.

(4) If, in the case of a patient who is receiving treatment for mental disorder as an in-patient in a hospital, it appears to a nurse of the prescribed class-

- (a) that the patient is suffering from mental disorder to such a degree that it is necessary for his health or safety or for the protection of others for him to be immediately restrained from leaving the hospital; and
- (b) that it is not practicable to secure the immediate attendance of a practitioner for the purpose of furnishing a report under subsection (2) above, the nurse may record that fact in writing; and in that event the patient may be detained in the hospital for a period of six hours from the time when that fact is so recorded or until the earlier arrival at the place where the patient is detained of a practitioner having power to furnish a report under that subsection.

(5) A record made under subsection (4) above shall be delivered by the nurse (or by a person authorised by the nurse in that behalf) to the managers of the hospital as soon as possible after it is made; and where a record is made under that subsection the period mentioned in subsection (2) above shall begin at the time when it is made.

(6) The reference in subsection (1) above to an in-patient does not include an in-patient who is liable to be detained in pursuance of an application under this Part of this Act and the references in subsections (2) and (4) above do not include an in-patient who is liable to be detained in a hospital under this Part of this Act.

(7) In subsection (4) above "prescribed" means prescribed by an order made by the Secretary of State.

Consent to treatment

Treatment requiring consent and a second opinion

57.-(1) This section applies to the following forms of medical treatment for mental disorder-

- (a) any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue; and
- (b) such other forms of treatment as may be specified for the purposes of this section by regulations made by the Secretary of State.

(2) Subject to section 62 below, a patient shall not be given any form of treatment to which this section applies unless he has consented to it and-

- (a) a registered medical practitioner appointed for the purposes of this Part of this Act by the Secretary of State (not being the responsible medical officer) and two other persons appointed for the purposes of this paragraph by the Secretary of State (not being registered medical practitioners) have certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; and
- (b) the registered medical practitioner referred to in paragraph (a) above has certified in writing that, having regard to the likelihood of the treatment alleviating or

preventing a deterioration of the patient's condition, the treatment should be given.

(3) Before giving a certificate under subsection (2) (b) above the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment, and of those persons one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner.

(4) Before making any regulations for the purpose of this section the Secretary of State shall consult such bodies as appear to him to be concerned.

Treatment requiring consent or a second opinion

58.-(1) This section applies to the following forms of medical treatment for mental disorder-

- (a) such forms of treatment as may be specified for the purposes of this section by regulations made by the Secretary of State;
- (b) the administration of medicine to a patient by any means (not being a form of treatment specified under paragraph (a) above or section 57 above) at any time during a period for which he is liable to be detained as a patient to whom this Part of this Act applies if three months or more have elapsed since the first occasion in that period when medicine was administered to him by any means for this mental disorder.

(2) The Secretary of State may be order vary the length of the period mentioned in subsection (1)(b) above.

(3) Subject to section 62 below, a patient shall not be given any form of treatment to which this section applies unless.

(a) he has consented to that treatment and either the responsible medical officer or a registered medical practitioner appointed for the purposes of this Part of this Act by the Secretary of State has certified in writing that the patient is capable of understanding its nature, purpose and likely effect and has consented to it; or

(b) a registered medical practitioner appointed as aforesaid (not being the responsible medical officer) has certified in writing that the patient is not capable of understanding the nature, purpose and likely effects of that treatment or has not consented to it but that, having regard to the likelihood of its alleviation or preventing a deterioration of his condition, the treatment should be given.

(4) Before giving a certificate under subsection (3)(b) above the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment, and of those persons one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner.

(5) Before making any regulations for the purposes of this section the Secretary of State shall consult such bodies as appear to him to be concerned.

Urgent treatment

62.-(1) Sections 57 and 58 above shall not apply any treatment-

- (a) which is immediately necessary to save the patient's life; or
- (b) which (not being irreversible) is immediately necessary to prevent a serious deterioration of his condition; or
- (c) which (not being irreversible or hazardous) is immediately
- (d) Which (not being irreversible or hazardous) is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or to others.

(2) Sections 60 and 61(3) above shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with section 57 of 58 above if the respondent discontinuance of the responsible medical officer considers that the treatment or of treatment under the plan would cause serious suffering to the patient.

(3) For the purposes of this section treatment is irreversible if it has unfavourable irreversible physical or psychological consequences and hazardous if it entails significant physical hazard.

Treatment not requiring consent

63. The consent of a patient shall not be required for any medical treatment given to him for the mental disorder from which he is suffering, not being treatment falling within section 57 or 58 above, if the treatment is given by or under the direction of the responsible medical officer.

Discharge of patients

Powers of tribunals

72.-(1) Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is liable to be detained under this Act, the tribunal may in any case direct that the patient be discharged, and-

(a) the tribunal shall direct the discharge of a patient liable to be detained under section 2 above if they are satisfied-

(i) that he is not then suffering from mental disorder or from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by a medical treatment) for at least a limited period; or

(ii) that his detention as aforesaid is not justified in the interests of his own health or safety or with a view to the protection of other persons;

(b) the tribunal shall direct the discharge of a patient liable to be detained otherwise than under section 2 above if they are satisfied-

(i) that he is not then suffering from mental illness psychopathic disorder, severe mental impairment or mental impairment or from any of those forms of disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or

(ii) that it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment;

(iii) in the case of an application by virtue of paragraph (g) of section 66(1) above, that the patient, if released, would not be likely to act in a manner dangerous to other persons or to himself.

(2) In determining whether to direct the discharge of a patient detained otherwise than under section 2 above in a case not falling within paragraph (b) of subsection (1) above, the tribunal shall have regard-

(a) to the likelihood of medical treatment alleviating or preventing a deterioration of the patient's condition; and

(b) in the case of a patient suffering from mental illness or severe mental impairment, to the likelihood of the patient, if discharged, being able to care for himself, to obtain the care he needs or to guard himself against serious exploitation.

Mentally disordered persons found in public places

136.-(1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of section 135 above.

(2) A person removed to a place of safety under this section may be detained there for a period not exceeding 72 hours for the purpose of enabling him to be examined by a registered medical practitioner and to be interviewed by an approved social worker and of making any necessary arrangements for his treatment or care.

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MENTAL HYGIENE LAW

TITLE B Mental Health Act

ARTICLE 9 Hospitalization of the Mentally Ill



9.01. Definitions

As used in this article:

"in need of care and treatment" means that a person has a mental illness for which in-patient care and treatment in a hospital is appropriate.

"in need of involuntary care and treatment" means that a person has a mental illness for which care and treatment as a patient in a hospital is essential to such person's welfare and whose judgment is so impaired that he is unable to understand the need for such care and treatment.

"need for retention" means that a person who has been admitted to a hospital pursuant to this article is in need of involuntary care and treatment in a hospital for a further period.

"record" of a patient shall consist of admission, transfer or retention papers and orders, and accompanying data required by this article and by the regulations of the commissioner.

"director of community services" means the director of community services for the mentally disabled appointed pursuant to article eleven of this chapter.

"qualified psychiatrist" means a physician licensed to practice medicine in New York state who : (a) is a diplomate of the American board of psychiatry and neurology or is eligible to be

certified by that board; or (b) is certified by the American osteopathic board of neurology and psychiatry or is eligible to be certified by that board.

9.13. Voluntary admissions

(a) The director of any hospital may receive as a voluntary patient any suitable person in need of care and treatment, who voluntarily makes written application therefor. If the person is under sixteen years of age, the person may be received as a voluntary patient only on the application of the parent, legal guardian, or next-of-kin of such person, or, subject to the terms of any court order or any instrument executed pursuant to section three hundred eighty-four-a of the social services law, a social services official or authorized agency with care and custody of such person pursuant to the social services law, the director of the division for youth, acting in accordance with section five hundred nine of the executive law, or a person or entity having custody of the person pursuant to an order issued pursuant to section seven hundred fifty-six or one thousand fifty-five of the family court act. If the person is over sixteen and under eighteen years of age, the director may, in his discretion, admit such person either as a voluntary patient on his own application or on the application of the person's parent, legal guardian, next-fo-kin, or , subject to the terms of any court order or any instrument executed pursuant to section three hundred eighty-four-a of the social services law, a social services official or authorized agency with care and custody of such person pursuant to the social services law, the director of the division for youth, acting in accordance with section five hundred nine of the executive law,

provided that such person knowingly and voluntarily consented to such application in accordance with such section, or a person or entity having custody of the person pursuant to an order issued pursuant to section seven hundred fifty-six or one thousand fifty-five of the family court act.

(b) If such voluntary patient gives notice in writing to the director of the patient's desire to leave the hospital, the director shall promptly release the patient; provided, however, that if there are reasonable grounds for belief that the patient may be in need of involuntary care and treatment the director may retain the patient for a period not to exceed seventy-two hours from receipt of such notice. Before the expiration of such seventy-two hour period, the director shall either release the patient or apply to the supreme court or the county court in the county where the hospital is located for an order authorizing the involuntary retention of such patient. The application and proceedings in connection therewith shall be in the manner prescribed in this article for a court authorization to retain an involuntary patient, except that notice of such application shall be served forthwith and, if a hearing be demanded, the date for hearing to be fixed by the court shall be at a time not later than three days from the date such notice has been received by the court. If it be determined by the court that the patient is mentally ill and in need of retention for involuntary care and treatment in the hospital, the court shall forthwith issue an order authorizing the retention of such patient for care and treatment in the hospital, or, if requested by the patient, his guardian, or committee, in such other non-public hospital as may be within the financial means of the patient, for a period not exceeding sixty days from the date of such

order. Further application for retention of the patient for periods not exceeding six months, one year, and two year periods thereafter, respectively, may thereafter be made in accordance with the provisions of this article.

In the case of a patient under eighteen years of age, such notice requesting release of the patient may be given by the patient, by the person who made application for his admission, by a person of equal or closer relationship, or by the mental hygiene legal service. If such notice be given by any other person, the director may in his discretion refuse to discharge the patient and in the event of such refusal, such other person or the mental hygiene legal service may apply to the supreme court or to a county court for the release of the patient.

9.15. Informal admissions

The director of any hospital approved by the commissioner for such purpose may receive therein as an informal patient any suitable person in need of care and treatment requesting admission thereto. Such person may be admitted as a patient without making formal or written application therefor and any such patient shall be free to leave such hospital at any time after such admission.

9.19. Voluntary and informal admissions ; notices

The director shall cause all patients admitted as voluntary or informal patients to be informed once during each one hundred twenty days of hospitalization of their status and rights, including their right to avail themselves of the facilities of the mental hygiene legal service. At the time of such periodic notification,

the written consent of a patient to his continued stay as a voluntary or informal patient shall be obtained and a copy thereof shall be given to the mental hygiene legal service.

9.25. Voluntary and informal admission ; review of status

(a) No voluntary or informal patient, whether admitted on such status or converted thereto, shall be continued in such status for a period beyond twelve months from the date of commencement of such status or beyond twelve months from the effective date of this statute, whichever is later, unless the suitability of such patient to remain in such status and his willingness to so remain have been reviewed. The director shall review the suitability of such patient to remain in such status, and the mental hygiene legal service shall review the willingness of such patient to remain in such status. Notice of the determination of the patient's suitability made by the director shall be given to the mental hygiene legal service. If the mental hygiene legal service finds that there is any ground to doubt the director's determination of the suitability of such patient to remain in a voluntary or informal status or the willingness of the patient to so remain, it shall make an application upon notice to the patient and the director of the hospital, for a court order determining those questions. In any such proceeding, the patient or someone on his behalf or the mental hygiene legal service may request a hearing. If the mental hygiene legal service finds no grounds to doubt the determination of the director as to the suitability, or the willingness of the patient to continue in a voluntary or informal status, it shall so certify and the patient may be continued in the hospital in such status. A copy of such certification of review shall

be filed in the patient's record.

(b) If an application for a court order has been made, and a hearing is requested, the provisions governing hearings contained in section 31.31 shall be applicable.

(c) If an application for a court order has been made, the court, in determining the proceeding, may approve the continued hospitalization of the patient as a voluntary or informal patient or, if the court finds that the patient is not suitable or willing to continue as a voluntary or informal patient, it may order the discharge of the patient or make such other order as it may deem appropriate in the circumstances.

(d) Prior to the termination of twelve months from the date of the certification on such first review by the mental hygiene legal service or, if an application for a court order has been made, from the date of the first order and, thereafter, prior to the termination of twelve months from any subsequent certification or subsequent order, as the case may be, the director and the mental hygiene legal service shall conduct another review of the patient's suitability and willingness to remain as a voluntary or informal patient as set forth in the foregoing subdivisions.

9.27. Involuntary admission on medical certification

(a) the director of a hospital may receive and retain therein as a patient any person alleged to be mentally ill and in need of involuntary care and treatment upon the certificates of two examining physicians, accompanied by an application for the admission of such person. The examination may be conducted jointly but each examining physician shall execute a separate certificate.

(b) Such application must have been executed within ten days prior to such admission. It may be executed by any one of the following:

1. any person with whom the person alleged to be mentally ill resides.
2. the father or mother, husband or wife, brother or sister or the child of any such person or the nearest available relative.
3. the committee of such person.
4. an officer of any public or well recognized charitable institution or agency or home in whose institution the person alleged to be mentally ill resides.
5. the director of community services or social services official, as defined in the social services law, of the city or county in which any such person may be.
6. the director of the hospital or of a general hospital, as defined in article twenty-eight of the public health law, in which the patient is hospitalized.
7. the director or person in charge of a facility providing care to alcoholics, or substance abusers or substance dependent persons.
8. the director of the division for youth, acting in accordance with the provisions of section five hundred nine of the executive law.
9. subject to the terms of any court order or any instrument executed pursuant to section three hundred eighty-four-a of the social services law, a social services official or authorized agency which has, pursuant to the social services law, care and custody or guardianship and custody of a child over the age of sixteen.

10. subject to the terms of any court order a person or entity having custody of a child pursuant to an order issued pursuant to section seven hundred fifty-six or one thousand fifty-five of the family court act.

11. a qualified psychiatrist who is either supervising the treatment of or treating such person for a mental illness in a facility licensed or operated by the office of mental health.

(c) such application shall contain a statement of the facts upon which the allegation of mental illness and need for care and treatment are based and shall be executed under penalty of perjury but shall not require the signature of a notary public thereon.

(d) Before an examining physician completes the certificate of examination of a person for involuntary care and treatment, he shall consider alternative forms of care and treatment that might be adequate to provide for the person's needs without requiring involuntary hospitalization. If the examining physician knows that the person he is examining for involuntary care and treatment has been under prior treatment, he shall, insofar as possible, consult with the physician or psychologist furnishing such prior treatment prior to completing his certificate. Nothing in this section shall prohibit or invalidate any involuntary admission made in accordance with the provisions of this chapter.

(e) The director of the hospital where such person is brought shall cause such person to be examined forthwith by a physician who shall be a member of the psychiatric staff of such hospital other than the original examining physicians whose certificate or certificates accompanied the application and, if such person is found to be in need of involuntary care and treatment, he may be admitted

thereto as a patient as herein provided.

(f) Following admission to a hospital, no patient may be sent to another hospital by any form of involuntary admission unless the mental hygiene legal service has been given notice thereof.

(g) Applications for involuntary admission of patients to residential treatment facilities for children and youth or transfer of involuntarily admitted patients to such facilities shall be reviewed by the pre-admission certification committee serving such facility in accordance with section 9.51 of this article.

(h) If a person is examined and determined to be mentally ill, the fact that such person suffers from alcohol or substance abuse shall not preclude commitment under this section.

(i) after an application for the admission of a person has been completed and both physicians have examined such person and separately certified that he or she is mentally ill and in need of involuntary care and treatment in a hospital, either physician is authorized to request peace officers, when acting pursuant to their special duties, or police officers, who are members of an authorized police department or force or of a sheriff's department, to take into custody and transport such person to a hospital for determination by the director whether such person qualifies for admission pursuant to this section. Upon the request of either physician an ambulance service, as defined by subdivision two of section three thousand one of the public health law, is authorized to transport such person to a hospital for determination by the director whether such person qualifies for admission pursuant to this section.

9.31. Involuntary admission on medical certification ; patient's right to a hearing

(a) If, at any time prior to the expiration of sixty days from the date of involuntary admission of a patient on an application supported by medical certification, he or any relative or friend or the mental hygiene legal service gives notice in writing to the director of request for hearing on the question of need for involuntary care and treatment, a hearing shall be held as herein provided. The patient or person requesting a hearing on behalf of the patient may designate the county where the hearing shall be held, which shall be either in the county where the hospital is located, the county of the patient's residence, or the county in which the hospital to which the patient was first admitted is located. Such hearing shall be held in the county so designated, subject to application by any interested party, including the director, for change of venue to any other county because of the convenience of parties or witnesses or the condition of the patient upon notice to the persons required to be served with notice of the patient's initial admission.

(b) It shall be the duty of the director upon receiving notice of such request for hearing to forward forthwith a copy of such notice with a record of the patient to the supreme court or the county court in the county designated by the applicant, if one be designated, or if no designation be made, then to the supreme court or the county court in the county where such hospital is located. A copy of such notice and record shall also be given the mental hygiene legal service.

(c) The court which receives such notice shall fix the date of such hearing at a time not later than five days from the date such notice is received by the court and cause the patient, any other

person requesting the hearing, the director, the mental hygiene legal service, and such other persons as the court may determine to be advised of such date. Upon such date, or upon such other date to which the proceeding may be adjourned, the court shall hear testimony and examine the person alleged to be mentally ill, if it be deemed advisable in or out of court. If it be determined that the patient is in need of retention, the court shall deny the application for the patient's release. If the patient is in a psychiatric hospital maintained by a political subdivision of the state or in a general hospital the court, upon notice to the patient and the mental hygiene legal service and an opportunity to be heard, may order the patient transferred to the jurisdiction of the department for retention in a hospital operated by the state designated by the commissioner or to a private facility having an appropriate operating certificate for retention therein for the balance of the period for which the hospital is authorized to retain the patient. If it appears, however, that the relatives of the patient or a committee of his person are willing and able properly to care for him at some place other than a hospital, then, upon their written consent, the court may order the transfer of the patient to the care and custody of such relatives or such committee. If it be determined that the patient is not mentally ill or not in need of retention, the court shall order the release of the patient.

(d) If the court shall order the release of the patient, such patient shall forthwith be released.

(e) The department or the director of the hospital authorized to retain or receive and retain such patient, as the case may be, shall be immediately furnished with a copy of the order of the court

and, if a transfer is ordered, shall immediately make provisions for the transfer of such patient.

(f) The papers in any proceeding under this article which are filed with the county clerk shall be sealed and shall be exhibited only to the parties to the proceeding or someone properly interested, upon order of the court.

9.33. Court authorization to retain an involuntary patient

(a) If the director shall determine that a patient admitted upon an application supported by medical certification, for whom there is no court order authorizing retention for a specified period, is in need of retention and if such patient does not agree to remain in such hospital as a voluntary patient, the director shall apply to the supreme court or the county court in the count where the hospital is located for an order authorizing continued retention. Such application shall be made no later than sixty days from the date of involuntary admission on application supported by medical certification or thirty days from the date of an order denying an application for patient's release pursuant to section 9.31, whichever is later ; and the hospital is authorized to retain the patient for such further period during which the hospital is authorized to make such application or during which the application may be pending. The director shall cause written notice of such application to be given the patient and a copy thereof shall be given personally or by mail to the persons required by this article to be served with notice of such patient's initial admission and to the mental hygiene legal service. Such notice shall state that a hearing may be requested and that failure to make such a request within five days, excluding Sunday and

holidays, from the date that the notice was given to the patient will permit the entry without a hearing of an order authorizing retention.

(b) If no request is made for a hearing on behalf of the patient within five days, excluding Sunday and holidays, from the date such notice of such application was given such patient, and if the mental hygiene legal service has not requested a hearing, the court receiving the application may, if satisfied that the patient requires continued retention for care and treatment or transfer and continued retention, immediately issue an order authorizing continued retention of such patient in such hospital for a period not to exceed six months from the date of the order or, if such patient is in a psychiatric hospital operated by a political subdivision of the state or in a general hospital, such order may direct the transfer of such patient to the jurisdiction of the department for retention in a hospital operated by the state or to a private facility having an appropriate operating certificate, to be retained therein for a period not to exceed six months from the date of such order.

(c) Upon the demand of the patient or of anyone on his behalf or upon request of the mental hygiene legal service, the court shall, or may on its own motion, fix a date for the hearing of the application, in like manner as is provided for hearings in section 9.31. The provisions of such section shall apply to the procedure for obtaining and holding a hearing and to the granting or refusal to grant an order of retention by the court, except that if the patient has already had a hearing, he shall not have the right to designate initially the county in which the hearing shall be held.

(d) If the director of a hospital, which a patient is retained pursuant to the foregoing subdivisions of this section, shall

determine that the condition of such patient requires his further retention in a hospital, he shall, if such patient does not agree to remain in such hospital as a voluntary patient, apply during the period of retention authorized by the last order of the court to the supreme court or the county court in the county where the hospital is located for an order authorizing further continued retention of such patient. The procedures for obtaining any order pursuant to this subdivision shall be in accordance with the provisions of the foregoing subdivisions of this section ; provided that the patient or anyone on his behalf or the mental hygiene legal service may request that the patient be brought personally before the court, in which case the court shall not grant an order for periods of one year or longer unless such patient shall have appeared personal before the court. The period for continued retention pursuant to the first order obtained under this subdivision shall authorize further continued retention of the patient for not more than one year from the date of the order. The period for the further continued retention of the patient authorized by any subsequent order under this subdivision shall be for periods not to exceed two years each from the date of the order.

9.35. Review of court authorization to retain an involuntary patient

If a person who has been denied release or whose retention, continued retention, or transfer and continued retention has been authorized pursuant to this article, or any relative or friend in his behalf, be dissatisfied with any such order he may, within thirty days after the making of any such order, obtain a rehearing and a review of the proceedings already had and of such order upon a petition to a

justice of the supreme court other than the judge or justice presiding over the court making such order. Such justice shall cause a jury to be summoned and shall try the question of the mental illness and the need for retention of the patient so authorized to be retained. Any such patient or the person applying on his behalf for such review may waive the trial of the fact by a jury and consent in writing to trial of such fact by the court. No such petition for rehearing and review shall be made by anyone other than the person so authorized to be retained or the father, mother, husband, wife, or child of such person, unless the petitioner shall have first obtained the leave of the court upon good cause shown. If the verdict of the jury, or the decision of the court when jury trial has been waived, be that such person is not mentally ill or is not in need of retention the justice shall forthwith discharge him, but if the verdict of the jury, or the decision of the court where a jury trial has been waived, be that such person is mentally ill and in need of retention the justice shall certify that fact and make an order authorizing continued retention under the original order. Such order shall be resented, at the time of authorization of continued retention of such mentally ill person, to, and filed with, the director of the hospital in which the mentally ill person is authorized to be retained, and a copy thereof shall be forwarded to the department by such director and filed in the office thereof. Proceedings under the order shall not be stayed pending an appeal therefrom, except upon a order of a justice of the supreme court, made upon a notice and after a hearing, with provisions made therein for such temporary care or confinement of the alleged mentally ill person as may be deemed necessary.

9.37. Involuntary admission on certificate of a director of community services or his designee

(a) The director of a hospital, upon application by a director of community services or an examining physician duly designated by him or her, may receive and care for in such hospital as a patient any person who, in the opinion of the director of community services or the director's designee, has a mental illness for which immediate inpatient care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or herself or others. The need for immediate hospitalization shall be confirmed by a staff physician of the hospital prior to admission. Within seventy-two hours, excluding Sunday and holidays, after such admission, if such patient is to be retained for care and treatment beyond such time and he or she does not agree to remain in such hospital as a voluntary patient, the certificate of another examining physician who is a member of the psychiatric staff of the hospital that the patient is in need of involuntary care and treatment shall be filed with the hospital. From the time of his or her admission under this section the retention of such patient for care and treatment shall be subject to the provisions for notice, hearing, review, and judicial approval of continued retention or transfer and continued retention provided by this article for the admission and retention of involuntary patients, provided that, for the purposes of such provisions, the date of admission of the patient shall be deemed to be the date when the patient was first received in the hospital under this section.

9.39. Emergency admissions for immediate observation, care, and treatment

(a) The director of any hospital maintaining adequate staff and facilities for the observation, examination, care, and treatment of persons alleged to be mentally ill and approved by the commissioner to receive and retain patients pursuant to this section may receive and retain therein as a patient for a period of fifteen days any person alleged to have a mental illness for which immediate observation, care, and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or others. "Likelihood to result in serious harm" as used in this article shall mean :

1. substantial risk of physical harm to himself as manifested by threats of or attempts suicide or serious bodily harm or other conduct demonstration that he is dangerous to himself, or

2. a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

The director shall cause to be entered upon the hospital records the name of the person or persons, if any, who have brought such person to the hospital and the details of the circumstances leading to the hospitalization of such person.

The director shall admit such person pursuant to the provisions of this section only if a staff physician of the hospital upon examination of such person finds that such person qualifies under the requirements of this section. Such person shall not be retained for a period of more than forty-eight hours unless within such period such finding is confirmed after examination by another physician who

shall be a member of the psychiatric staff of the hospital. Such person shall be served, at the time of admission, with written notice of his status and rights as a patient under this section. Such notice shall contain the patient's name. At the same time, such notice shall also be given to the mental hygiene legal service and personally or by mail to such person or persons, not to exceed three in number, as may be designated in writing to receive such notice by the person alleged to be mentally ill. If at any time after admission, the patient, any relative, friend, or the mental hygiene legal service gives notice to the director in writing of request for court hearing on the question of need for immediate observation care, and treatment, a hearing shall be held as herein provided as soon as practicable but in any event not more than five days after such request is received, except that the commencement of such hearing may be adjourned at the request of the patient. It shall be the duty of the director upon receiving notice of such request for hearing to forward forthwith a copy of such notice with a record of the patient to the supreme court or county court in the county where such hospital is located. A copy of such notice and record shall also be given the mental hygiene legal service. The court which receives such notice shall fix the date of such hearing and cause the patient or other person requesting the hearing, the director, the mental hygiene legal service and such other persons as the court may determine to be advised of such date. Upon such date, or upon such other date to which the proceeding may be adjourned, the court shall hear testimony and examine the person alleged to be mentally ill, if it be deemed advisable in or out of court, and shall render a decision in writing that there is reasonable cause to believe that the patient has a mental illness for which immediate inpatient

care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or others. If it be determined that there is such reasonable cause, the court shall forthwith issue an order authorizing the retention of such patient for any such purpose or purposes in the hospital for a period not to exceed fifteen days from the date of admission. Any such order entered by the court shall not be deemed to be an adjudication that the patient is mentally ill, but only a determination that there is reasonable cause to retain the patient for the purposes of this section.

(b) Within fifteen days of arrival at the hospital, if a determination is made that the person is not in need of involuntary care and treatment, he shall be discharged unless he agrees to remain as a voluntary or informal patient. If he is in need of involuntary care and treatment and does not agree to remain as a voluntary or informal patient, he may be retained beyond such fifteen day period only by admission to such hospital or another appropriate hospital pursuant to the provisions governing involuntary admission on application supported by medical certification and subject to the provisions for notice, hearing, review, and judicial approval of retention or transfer and retention governing such admissions, provided that, for the purposes of such provisions, the date of admission of the patient shall be deemed to be the date when the patient was first received under this section. If a hearing has been requested pursuant to the provisions of subdivision (a), the filing of an application for involuntary admission on medical certification shall not delay or prevent the holding of the hearing.

(c) If a person is examined and determined to be mentally ill the fact that such person suffers from alcohol or substance abuse

shall not preclude commitment under this section.

9.40. Emergency observation, care and treatment in comprehensive psychiatric emergency programs

(a) the director of any comprehensive psychiatric emergency program may receive and retain therein for a period not to exceed seventy-two hours, any person alleged to have a mental illness for which immediate observation, care and treatment in such program is appropriate and which is likely to result in serious harm to the person or others. The director shall cause to be entered upon the program records the name of the person or persons, if any, who have brought the person alleged to have a mental illness to the program and the details of the circumstances leading the person or persons to bring the person alleged to have a mental illness to the program.

(b) The director shall cause examination of such persons to be initiated by a staff physician of the program as soon as practicable and in any event within six hours after the person is received into the program's emergency room. Such person may be retained for observation, care and treatment and further examination for up to twenty-four hours if, at the conclusion of such examination, such physician determines that such person may have a mental illness for which immediate observation care and treatment in a comprehensive psychiatric emergency program is appropriate, and which is likely to result in serious harm to the person or others.

9.41. Emergency admissions for immediate observation, care, and treatment ; powers of certain peace officers and police officers

Any peace officer, when acting pursuant to his or her special

duties, or police officer who is a member of the state police or of an authorized police department or force or of a sheriff's department may take into custody any person who appears to be mentally ill and is conductig himself or herself in a manner which is likely to result in serious harm to the person or others. Such officer may direct the removal of such person or remove him or her to any hospital specified in subdivision (a) of section 9.39 or any comprehensive psychiatric emergency program specified in subdivision (a) of section 9.40 , or, pending his or her examination or admission to any such hospital or program, temporarily detain any such person in another safe and comfortable place, in which event, such officer shall immediately notify the director of community services or, if there be none, the health officer of the city or county of such action.

9.43. Emergency admissions for immediate observation, care, and treatment ; powers of courts

(a) Whenever any court of inferior or general jurisdiction is informed by verified statement that a person is apparently mentally ill and is conduction himself or herself in a manner which in a person who is not mentally ill would be deemed disorderly conduct or which is likely to result in serious harm to himself or herself, such court shall issue a warrant direction that such person be brought before it. If, when said person is brought before the court, it appears to the court, on the basis of evidence presented to it, that such person has or may have a mental illness which is likely to result in serious harm to himself or herself or others, the court shall issue a civil order directing his or her removal to any hospital specified in subdivision (a) of section 9.39 or any comprehensive

psychiatric emergency program specified in subdivision (a) of section 9.40, willing to receive such person for a determination by the director of such hospital or program whether such person should be retained therein pursuant to such section.

(b) Whenever a person before a court in a criminal action appears to have a mental illness which is likely to result in serious harm to himself or herself or others and the court determines either that the crime has not been committed or that there is not sufficient cause to believe that such person is guilty thereof, the court may issue a civil order as above provided, and in such cases the criminal action shall terminate.

9.45. Emergency admissions for immediate observation, care, and treatment ; powers of directors of community services

The director of community services or the director's designee shall have the power to direct the removal of any person, within his or her jurisdiction, to a hospital approved by the commissioner pursuant to subdivision (a) of section 9.39 of this article, or to a comprehensive psychiatric emergency program pursuant to subdivision (a) of section 9.40 of this article, if the parent, adult sibling, spouse or child of the person, the committee of the person, a licensed psychologist, registered professional nurse or certified social worker currently responsible for providing treatment services to the person, a licensed physician, health officer, peace officer or police officer reports to him that such person has a mental illness for which immediate care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or herself or others. It shall be the duty of peace officers, when action pursuant to their

special duties, or police officers, who are members of an authorized police department or force or of a sheriff's department to assist representatives of such director to take into custody and transport any such person. Upon the request of a director of community services or the director's designee an ambulance service, as defined in subdivision two of section three thousand one of the public health law, is authorized to transport any such person. Such person may then be retained in a hospital pursuant to the provisions of section 9.39 or in a comprehensive psychiatric emergency program pursuant to the provisions of section 9.40 of this article.

9.55. Emergency admissions for immediate observation, care, and treatment ; powers of qualified psychiatrists

A qualified psychiatrist shall have the power to direct the removal of any person, whose treatment for a mental illness he or she is either supervising or providing in a facility licensed or operated by the office of mental health which does not have an inpatient psychiatric service, to a hospital approved by the commissioner pursuant to subdivision (a) of section 9.39 of this article or to a comprehensive psychiatric emergency program, if he or she determines upon examination of such person that such person appears to have a mental illness for which immediate observation, care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or herself or others. Upon the request of such qualified psychiatrist, peace officers, when acting pursuant to their special duties, or police officers, who are members of an authorized police department or force or of a sheriff's department shall take into custody and transport any such person. Upon the request of a

qualified psychiatrist an ambulance service, as defined by subdivision two of section three thousand one of the public health law, is authorized to transport any such person, Such person may then be admitted to a hospital in accordance with the provisions of section 9.39 of this article or to a comprehensive psychiatric emergency program in accordance with the provisions of section 9.40 of this article.

9.57. Emergency admissions for immediate observation, care, and treatment ; powers of emergency room physicians

A physician who has examined a person in an emergency room or provided emergency medical services at a general hospital, as defined in article twenty-eight of the public health law, which does not have an inpatient psychiatric service, or a physician who has examined a person in a comprehensive psychiatric emergency program shall be authorized to request that the director of the program or hospital, or the director's designee, direct the removal of such person to a hospital approved by the commissioner pursuant to subdivision (a) of section 9.39 of this article or to a comprehensive psychiatric emergency program, if the physician determines upon examination of such person that such person appears to have a mental illness for which immediate care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or others. Upon the request of the physician, the director of the program or hospital or the director's designee, is authorized to direct peace officers, when acting pursuant to their special duties, or police officers, who are members of an authorized police department or force or of a sheriff's department to take into custody and transport any such person.

Upon the request of an emergency room physician or the director of the program or hospital, or the director's designee, an ambulance service, as defined by subdivision two of section three thousand one of the public health law, is authorized to take into custody and transport any such person. Such person may then be admitted to a hospital in accordance with the provisions of section 9.39 of this article or to a comprehensive psychiatric emergency program in accordance with the provisions of section 9.40 of this article.

ภาคผนวก ค
กฎหมายสุขภาพจิตของประเทศไทย
The Mental Health Law



Purpose of the Law

Article 1. The purpose of this Law is to provide mentally disordered persons, etc. with medical care and custody, as well as to promote their social rehabilitation, and to make efforts toward the prevention of mental disorders, and the maintenance and improvement of the mental health of other nations, in an attempt to advance the general well-being of mentally disordered persons, etc. and to improve the mental health of the nation.

Definition

Article 3. The term, a "mentally disordered person" in this Law refers to a psychotic person (including those who are psychotic due to intoxication), a mentally retarded person or a psychopathic person.

Voluntary admission

Article 22-2. In case the superintendent of a mental hospital (including a hospital other than a mental hospital with a psychiatric room : the same shall apply, hereinafter) intends to admit a mentally disordered person, the former shall endeavor to admit the latter based on the latter's consent.

Article 22-3. In case a mentally disordered person has been admitted to a mental hospital voluntarily, the superintendent of the hospital shall, at the time of the admission inform him of the procedures for

requesting discharge from the hospital, etc. prescribed in Art. 38-4, and other matters specified by a Health and Welfare Ministerial Ordinance, in writing, and shall receive the document, which bears a statement that he has been admitted voluntarily.

2. In case a voluntarily admitted mentally disordered person (referred to as a "voluntarily admitted person" hereinafter) has requested to be discharged, the superintendent of the mental hospital shall discharge him.

3. With regard to the cases prescribed by the preceding Paragraph, when the superintendent of the mental hospital has, as a result of a medical examination made by a Designated Physician deemed it necessary to continue the admission of the voluntarily admitted person concerned for medical care a custody, the superintendent may despite the provisions in the same paragraph refrain from discharging him for a period of not longer than 72 hours. In this case, the Designated Physician shall report the matters specified by a Health and Welfare Ministerial Ordinance on the medical examination record, without delay.

4. In case the superintendent of a mental hospital takes the measure prescribed by the preceding Paragraph he shall inform the voluntarily admitted person concerned, of that effect. He shall also inform him of the procedure for the request for discharge, etc., as prescribed in Art. 38-4, and other matters, as specified by a Health and Welfare Ministerial Ordinance, in writing.

Application for the medical examination and custody

Article 23. Any person, who has discovered a person who has been mentally disordered, or is suspected to be mentally disordered, may

apply to the Prefectural Governor for a medical examination by a Designated Physician, and for making arrangements for the necessary custody for the said person.

2. When a person intends to file an application as enumerated in the preceding Paragraph, an application form with the following items on it shall be submitted to the Prefectural Governor via the Director of the nearest Health Center:

(1) The address, the name and the birthdate, of the applicant

(2) A place where the person in question resides at present; the place of residence, the name, sex, and the birthdate, of the person in question

(3) An outline of the symptoms of the person in question

(4) The address and the name of a person, if any, who is actually exercising custody over the person in question

Report by a policeman

Article 24. When a policeman, in the execution of his duties, has discovered a person whom he deems to be liable to injure himself or others because of his mental disorder, judging from his abnormal behavior or other surrounding circumstances, the policeman shall report that effect without delay to the Prefectural Governor via the Director of the nearest Health Center.

Involuntary admission by the Prefectural Governor

Article 29. When a Prefectural Governor, as the result of the medical examination prescribed in Art. 27, has deemed that the examined person is mentally disordered and is liable to injure himself or others

because of his mental disorder unless he is admitted to a hospital for his medical care and custody, the Governor may admit him to a mental hospital established by the National or Prefectural Government, or a Designated Hospital.

2. Only when the results of the medical examinations, made by two Designated Physicians or more, designated by the Prefectural Governor concerned, have agreed on the fact that the examined person has been deemed to be mentally disordered and to be liable to injure himself or others because of his mental disorder unless he is admitted to a hospital a hospital, after the said Physicians medical examinations, the Prefectural Governor may then admit him to a hospital in the case, as enumerated in the preceding Paragraph.

3. In case a Prefectural Governor takes the measure prescribed in Par. 1 of this Article, he shall inform the mentally disordered person concerned, of that effect, the procedure for the request for discharge, etc., as prescribed in Art. 38-4, and other matters specified by a health and Welfare Ministerial Ordinance, in writing.

4. The superintendent of a mental hospital established by the National or Prefectural Government, or a Designated hospital, shall accommodate the mentally disordered person enumerated in Par. 1 of this Article, except in the case where there is no vacancy because of the fact that the beds (the beds involved in the designation in the case of a Designated Hospital of which a part of the Hospital facilities is designated under Art. 5) are already occupied by those admitted, as prescribed in Par. 1 of this Article or Par. 1 of the following Article.

5. A person who is actually admitted to a hospital, as prescribed in Art. 2 of the Mental Hospital Law (Law No. 25 of 1919),

at the time of the enforcement of this Law, shall be regarded as the one admitted to the hospital, as prescribed in Par. 1 of this Article.

Article 29-2. In case a Prefectural Governor has been required to take urgent action with regard to a person who has been mentally disordered, or is suspected to be mentally disordered, and has been deemed to fall into the requirements, as enumerated in Par. 1 of the preceding Article, and has been unable to take the procedure prescribed in Arts. 27 and 28 and the preceding Article, the Governor may admit the person in question to a mental hospital, as prescribed in Par. 1 of the preceding article or a Designated Hospital, after the Governor deemed, as a result of directing a Designated Physician designated by the Governor himself to conduct a medical examination, that the person in question has been a mentally disordered one and has been extremely liable to injure himself or others because of his mental disorder unless he is admitted to a hospital without delay.

2. When a Prefectural Governor has taken the measure, as enumerated in the preceding Paragraph, he shall make a decision promptly on whether he will direct the admission of the person concerned, as prescribed in Par. 1 of the preceding Article.

3. The duration of the admission prescribed in Par. 1 of this Article shall last for a period of not longer than 72 hours.

4. The provisions in Pars. 4 to 6 of art. 27 and Art, 28-2, those in Par. 3 of the preceding Article, and those in Par. 4 of the same Article, shall apply mutatis mutandis to the medical examination prescribed in Par. 1 of this Article, the cases where the measure prescribed in Par. 1 of this Article is taken, and the accommodation of the person admitted, as prescribed in Par. 1 of this Article

respectively.

Article 29-3. When the superintendent of a mental hospital or a Designated Hospital prescribed in Par. 1 of Art. 29 has received a report, with regard to a person admitted, as prescribed in Par. 1 of the preceding Article, from the Prefectural Governor to the effect that a measure for the admission prescribed in Par. 1 of Art. 29 would not be taken, or when he has not received a report within the period enumerated in Par. 3 of the preceding Article, to the effect that a measure for the admission prescribed in Par. 1 of Art. 29 would be taken, he shall discharge the person in question without delay.

Admission for medical care and custody

Article 33. With regard to a person who has been deemed by the superintendent of a mental hospital, as a result of the medical examination of a Designated Physician, to be mentally disordered, and thus, to be in need of admission to a hospital for medical care and custody. When a person responsible for his custody has consented to the admission, the superintendent may admit him to the hospital without his own voluntary consent.

2. In case the selection of a person responsible for the custody of the person, as prescribed in the preceding Paragraph, by a Family Court, as prescribed in Item 4 of Par. 2 of Art. 20, is required, and the selection concerned has not been made the superintendent of a mental hospital may admit the said person to the hospital without his voluntary consent for a period of not longer than four weeks until the selection concerned is made, if the person responsible for his support has consented to the admission.

3. The person responsible for support who has agreed on the admission enumerated in the preceding Paragraph, shall be regarded as the one who falls into the provision of Item 4 of Par. 2 of Art. 20, during the admission prescribed by the same Paragraph and shall be regarded as a person responsible for custody prescribed by the same Article, except in the cases to which the provisions of Par. 1 of this Article applies.

4. When the superintendent of a mental hospital has taken the measure prescribed in Par 1 or 2 of the Article, he shall notify the Prefectural Governor via the Director of the nearest Health Center, of the symptoms of the person concerned, and other matters, as specified by a Health and Welfare Ministerial Ordinance, with a letter of consent of the person who has agreed on the admission, within 10 days after the measure was taken.

Admission for medical care and custody

Article 33. With regard to a person who has been deemed by the superintendent of a mental hospital, as a result of the medical examination of a Designated Physician, to be mentally disordered, and thus, to be in need of admission to a hospital for medical care and custody, when a person responsible for his custody has consented to the admission, the superintendent may admit him to the hospital without his own voluntary consent.

2. In case the selection of a person responsible for the custody of the person, as prescribed in the preceding Paragraph, by a Family court, as prescribed in Item 4 of Par. 2 of Art. 20, is required, and the selection concerned has not been made, the superintendent of a mental hospital may admit the said person to the

hospital without his voluntary consent for a period of not longer than four weeks until the selection concerned is made, if the person responsible for his support has consented to the admission.

3. The person responsible for support who has agreed on the admission enumerated in the preceding Paragraph, shall be regarded as the one who falls into the provision of Item 4 of Par. 2 of Art. 20, during the admission prescribed by the same Paragraph and shall be regarded as a person responsible for custody prescribed by the same Article, except in the cases to which the provisions of Par. 1 of this Article applies.

4. When the superintendent of a mental hospital has taken the measure prescribed in Par. 1 or 2 of this Article, he shall notify the Prefectural Governor via the Director of the nearest health Center, of the symptoms of the person concerned, and other matters, as specified by a Health and Welfare Ministerial Ordinance, in a letter of consent of the person who has agreed on the admission, within 10 days after the measure was taken.

Article 33-2. When the superintendent of a mental hospital has discharged a person, who was admitted, as prescribed in Par. 1 of the preceding Paragraph (referred to as a "person admitted for medical care and custody" hereinafter), he shall notify the Prefectural Governor via the Director of the nearest Health Center, of that effect and other matters, as specified by a Health and Welfare Ministerial Ordinance, within 10 days after the discharge.

Emergency admission

Article 33-4. In case the superintendent of a mental hospital designated by a Prefectural Governor as one in compliance with the criteria specified by the Minister of Health and Welfare, has been required to take urgent action, with regard to a person for whom the superintendent has been requested to provide medical care and custody, and has been unable to obtain the consent of a person responsible for custody (A person responsible for support of the person concerned in the cases prescribed in Par. 2 of Art. 33), may admit the person concerned to a hospital for a period of not longer than 72 hours, without the consent of the mentally disordered person himself, after the superintendent has concluded as a result of the medical examination conducted by a Designated Physician, that the person in question is mentally disordered, and there would be extreme interference with his medical care and custody unless he is admitted to the hospital without delay.

2. When the superintendent of a mental hospital prescribed in the preceding Paragraph has taken the measure prescribed in the same Paragraph, he shall notify the Prefectural Governor via the Director of the nearest Health Center, of the reasons for his taking the measure concerned, and other matters specified by a Health and Welfare Ministerial Ordinance without delay.

3. When a Prefectural governor has concluded that a mental hospital designated under Par. I of this Article is no longer in compliance with the criteria in the same Paragraph, he may cancel the designation.

Temporary admission

Article 34. In case a guardian, a spouse, a person who exercises parental power, or any other person responsible for the support of a person who has been deemed by the superintendent of a mental hospital, as a result of the medical examination conducted by a designated Physician, to be suspected to be mentally disordered, and will require a reasonably long time for his diagnosis, has agreed on his admission, the superintendent may admit him to the hospital temporarily for a period of not longer than three weeks without his own voluntary consent.

Regular report

Article 38-2. The superintendent of a mental hospital or a Designated Hospital, which has accommodated a person who was involuntarily admitted by a Prefectural Governor, shall report his symptoms and other matters specified by a Health and Welfare Ministerial Ordinance (referred to as "matters to be reported" hereinafter in this Paragraph), regularly to the Governor via the Director of the nearest Health Center, as specified by a Health and Welfare Ministerial Ordinance. In this case, the matters specified by a Health and Welfare Ministerial Ordinance, among other matters to be reported, shall be based on the result of a medical examination conducted by a Designated Physician.

2. The provisions in the preceding Paragraph shall apply mutatis mutandis to the superintendent of a mental hospital which has accommodated a person admitted for medical care and custody. In this case a "person involuntarily admitted by the Prefectural Governor" in the same Paragraph shall read a "person admitted for medical care and custody".

Review based on the regular report, etc.

Article 38-3. When a Prefectural Governor has received a report prescribed in the preceding Article, or a notification prescribed by Par. 4 of Art. 33 (This shall be limited to the one concerning a measure prescribed in Par. 1 of the same Article.), he shall inform the Psychiatric Review Board, of the symptoms and other matters, specified by a Health and Welfare Ministerial Ordinance, related to the person admitted, concerning the report or the notification and shall request the Board to review the necessity of the admission.

2. When the Psychiatric Review Board has been requested to conduct a review prescribed by the preceding Paragraph, the Board shall review the necessity of the admission, and shall inform the Prefectural Governor of the result of the review.

3. When the Psychiatric Review Board has deemed it necessary in conducting review enumerated in the preceding Paragraph, the Board may listen to the opinions of the admitted person concerning the review, the superintendent of the mental hospital which has admitted him, and other concerned.

4. When a Prefectural Governor has concluded that there is no necessity for the continuation of admission of an admitted person, based on the result of which the Governor was informed as prescribed in Par. 2 of this Article, of the review conducted by the Psychiatric Review Board, he must discharge the admitted person concerned, or must direct the superintendent of the mental hospital to discharge the said person.

ประวัติผู้เขียน

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