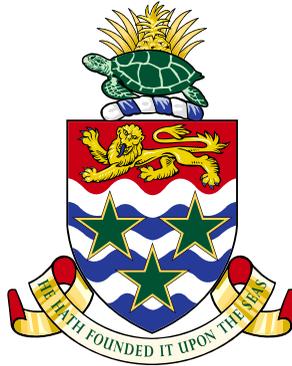


CAYMAN ISLANDS



MENTAL HEALTH (AMENDMENT) BILL, 2022

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A BILL FOR AN ACT TO AMEND THE MENTAL HEALTH ACT (2022 REVISION) TO CLARIFY THE PROCEDURE RELATING TO EMERGENCY DETENTION ORDERS; TO PROVIDE FOR ORDERS FOR PROTECTIVE CUSTODY; TO PROVIDE FOR RESTRICTIONS ON ACCESS TO ELECTRONIC NETWORKS BY PATIENTS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Health and Wellness (H & W)



Memorandum of OBJECTS AND REASONS

This Bill amends the Mental Health Act (2022 Revision) (the “principal Act”) to clarify the procedure relating to emergency detention orders, to provide for orders for protective custody, to provide for restrictions on access to electronic networks by patients and for incidental and connected purposes.

Clause 1 provides the short title and commencement of the legislation.

Clause 2 amends section 2 of the principal Act by repealing the definitions of certain words and introducing new definitions, in order to modernise the legislation.

Clause 2 also amends section 2 of the principal Act by introducing definitions for the words “emergency detention order”, “observation order”, “order for protective custody”, “protective custody” and “treatment order”.

Clause 3 amends section 6 of the principal Act by repealing subsection (1) and substituting proposed new subsections (1), (1A), (1B), (1C) and (1D).

The proposed new subsections provide for orders for protective custody. If a medical officer is of the opinion that a person is or may be suffering from a mental impairment or serious mental illness, the medical officer may make an order for protective custody in the prescribed form, directing a constable to —

- (a) take the person into protective custody; and
- (b) with all reasonable despatch, but no later than twelve hours after the person is taken into protective custody, bring the person before a medical doctor employed by the Government to be examined by that medical doctor.

The proposed new subsections also clarify the procedure relating to emergency detention orders. The medical officer who made the order for protective custody may consult with the medical doctor employed by the Government who examined the person, and if necessary, the medical officer shall make an emergency detention order, directing the detention of the person for up to seventy-two hours in a hospital or other place of safety able to receive and care for that person.

Further, the proposed new subsections clarify that where no emergency detention order is made, the person is to be released.

Clause 3 also amends section 6 of the principal Act by amending subsection (2) to provide that a patient or the nearest relative of a patient, within twenty-four hours of an emergency detention order being made, may request a second opinion from another medical officer. The proposed amendment also provides that if the second opinion recommends that an emergency detention order should not have been made, the emergency detention order shall be revoked. Further, the medical officer who made the emergency detention order shall order the release of the person in respect of whom the emergency detention order was made

and refer the matter, together with all records, to the Mental Health Commission, which shall make such decision as it thinks fit.

Clause 3 then amends section 6 of the principal Act by amending subsection (3) to provide that the appeal process applies in respect of an emergency detention order made under section 6, 7 or 12 of the legislation.

Clause 3 amends section 6 of the principal Act by amending subsection (5) to delete the words “under section 8” after the words “observation order”. This amendment is as a consequence of the proposed definition of the words “observation order” which includes a reference to the section under which such an order is made.

Further, clause 3 amends section 6 of the principal Act by repealing subsection (7) as a consequence of the insertion of the definition of the words “emergency detention order” in the proposed amendments to section 2 of the principal Act.

Clause 4 amends the principal Act by repealing and substituting section 7. The proposed new section 7 provides that a constable shall take a person into protective custody where the person appears to be a danger to himself or herself or other persons. The person must then be brought before a medical doctor employed by the Government to be examined.

The amendments to section 7 of the principal Act also seek to align the procedure for the making of an emergency detention order by clarifying that it is a medical officer, and not the medical doctor employed by the Government who makes an emergency detention order.

Further, the proposed new section 7 clarifies that where no emergency detention order is made, the person is to be released.

Clause 5 amends section 9 of the principal Act by deleting the words “or violates an assisted outpatient treatment order”. These words were deleted from section 9 in order to remove a minor conflict in the legislation as section 12 of the principal Act provides for the procedure in respect of a patient who violates an assisted outpatient treatment order.

Clause 6 amends section 12 of the principal Act by repealing subsections (5) and (6) and substituting proposed new subsections (5), (6), (6A), (6B), (6C) and (6D). The proposed provisions seek to align the procedure relating to orders for protective custody as well as the making of emergency detention orders in the legislation.

Further, the proposed new subsections clarify that where no emergency detention order is made, the person shall continue to be treated under the assisted outpatient treatment order.

Clause 7 amends the principal Act by repealing section 16 and substituting sections 16 and 16A.

While the proposed new section 16 retains the current provisions on postal restrictions in the principal Act, it also takes into consideration technological advancements and the use of electronic networks. As such, if, in the opinion of a responsible medical officer, access to any electronic network directly or indirectly by a patient may have an adverse effect on the patient, that access may be denied. It should be noted however that where access to any electronic network has been denied to a patient, the patient concerned, or the patient’s



nearest relative may, within seven days after being informed of the decision, appeal to the Mental Health Commission.

The proposed new section 16A provides for the procedure to be followed by a responsible medical officer where the responsible medical officer withholds a postal packet under section 16.

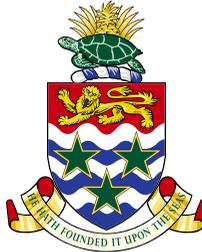
CAYMAN ISLANDS



MENTAL HEALTH (AMENDMENT) BILL, 2022

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CAYMAN ISLANDS**MENTAL HEALTH (AMENDMENT) BILL, 2022**

A BILL FOR AN ACT TO AMEND THE MENTAL HEALTH ACT (2022 REVISION) TO CLARIFY THE PROCEDURE RELATING TO EMERGENCY DETENTION ORDERS; TO PROVIDE FOR ORDERS FOR PROTECTIVE CUSTODY; TO PROVIDE FOR RESTRICTIONS ON ACCESS TO ELECTRONIC NETWORKS BY PATIENTS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

1. (1) This Act may be cited as the Mental Health (Amendment) Act, 2022.
- (2) This Act shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Act and in relation to different matters.

Amendment of section 2 of the Mental Health Act (2022 Revision) - interpretation

2. The *Mental Health Act (2022 Revision)*, in this Act referred to as the “principal Act”, is amended in section 2 as follows —
 - (a) in the definition of the words “**medical officer**”, by deleting the words “of the Islands”;



- (b) in the definition of the words “**nearest relative**”, in paragraph (a), by deleting the words “, a civil partner”; and
- (c) by inserting, in the appropriate alphabetical sequence, the following definitions —
- “**emergency detention order**” means an order made by a medical officer under section 6(1B), under section 7(4) or under section 12(6A);
- “**observation order**” means an order made by a medical officer under section 8(1);
- “**order for protective custody**” means an order made by a medical officer under section 6(1) or by a responsible medical officer under section 12(5);
- “**protective custody**” means an arrangement where a person is being safeguarded by, or under the care and protection of, law enforcement authorities;
- “**spouse**”, in relation to a person, means —
- (a) the husband or wife of that person; or
- (b) the civil partner of that person; and
- “**treatment order**” means an order made by a responsible medical officer under section 9(1).”.

Amendment of section 6 - emergency detention order

3. The principal Act is amended in section 6 as follows —

- (a) by repealing subsection (1) and substituting the following subsections —
- “(1) If a medical officer is of the opinion that a person is or may be suffering from a mental impairment or serious mental illness, the medical officer may make an order for protective custody in the prescribed form, directing a constable to —
- (a) take the person into protective custody; and
- (b) with all reasonable despatch, but no later than twelve hours after the person is taken into protective custody, bring the person before a medical doctor employed by the Government to be examined.
- (1A) The medical doctor who examines a person under subsection (1)(b) shall, after conducting the examination —
- (a) complete the prescribed form to be used in the assessment of the person; and
- (b) consult the medical officer under subsection (1).



- (1B) If, after consultation with the medical doctor who examined the person under subsection (1)(b), the medical officer considers that the person should be further detained, the medical officer shall make an emergency detention order in the prescribed form, directing the detention of that person for up to seventy-two hours in a hospital or other place of safety able to receive and care for that person.
- (1C) If the medical officer forms the opinion that there is no need to further detain the person, the medical officer shall not make an emergency detention order under subsection (1B) and shall order the release of that person.
- (1D) If the medical officer makes an emergency detention order under subsection (1B), the medical officer shall —
- (a) in writing, as soon as practicable thereafter, inform the Mental Health Commission of the detention of the person;
 - (b) supply the Mental Health Commission with a copy of the prescribed form under subsection (1A); and
 - (c) otherwise comply with any regulations that may be made under this Act in that regard.”;
- (b) by repealing subsection (2) and substituting the following subsection —
- “(2) A patient or the nearest relative of a patient, within twenty-four hours of an emergency detention order being made, may request a second opinion from another medical officer and if that medical officer recommends that an emergency detention order should not have been made —
- (a) the emergency detention order shall be revoked; and
 - (b) the medical officer who made the emergency detention order shall —
 - (i) order the release of the person in respect of whom the emergency detention order was made; and
 - (ii) refer the matter, together with all records, to the Mental Health Commission, which shall make such decision as it thinks fit.”;
- (c) in subsection (3), by deleting the words “under this section” and substituting the words “pursuant to an emergency detention order”;
- (d) in subsection (5)(b), by deleting the words “under section 8”; and
- (e) by repealing subsection (7).

Repeal and substitution of section 7 - apprehension of a person suspected to be a danger

4. The principal Act is amended by repealing section 7 and substituting the following section —

“Apprehension of a person suspected to be a danger

7. (1) Where it appears to a constable that a person —
- (a) is, by reason of mental impairment or serious mental illness, an immediate danger, or is likely to become a danger, to himself or other persons; or
 - (b) is threatening, attempting or preparing to inflict self-harm,
- the constable shall take the person into protective custody and, with all reasonable despatch but no later than twelve hours after the person is taken into protective custody, bring the person before a medical doctor employed by the Government to be examined.
- (2) A constable shall, upon taking the person to a medical doctor in accordance with subsection (1), immediately complete and file the prescribed form with the receiving medical doctor, and shall indicate in the prescribed form the grounds for the constable’s actions under subsection (1).
- (3) The medical doctor referred to in subsection (1) shall, after conducting the examination —
- (a) complete the prescribed form to be used in the assessment of the person; and
 - (b) consult a medical officer.
- (4) If the medical officer referred to in subsection (3)(b) considers that the person should be further detained, the medical officer shall make an emergency detention order in the prescribed form, directing that the person be detained for up to seventy-two hours in a hospital or other place of safety able to receive and care for that person.
- (5) If the medical officer referred to in subsection (3)(b) makes an emergency detention order under subsection (4), the medical officer shall —
- (a) in writing, as soon as practicable thereafter, inform the Mental Health Commission of the detention of the person;
 - (b) supply the Mental Health Commission with a copy of the prescribed form under subsection (3)(a); and



- (c) otherwise comply with any regulations that may be made under this Act in that regard.
- (6) If the medical officer referred to in subsection (3)(b) forms the opinion that there is no need to further detain the person, the medical officer shall not make an emergency detention order and shall order the release of that person.”.

Amendment of section 9 - treatment order

- 5. The principal Act is amended in section 9(1) by deleting the words “or violates an assisted outpatient treatment order”.

Amendment of section 12 - assisted outpatient treatment order

- 6. The principal Act is amended in section 12 by repealing subsections (5) and (6) and substituting the following subsections —

- “(5) If the patient violates an assisted outpatient treatment order, the responsible medical officer may make an order for protective custody in the prescribed form, directing a constable to —
 - (a) take the patient into protective custody; and
 - (b) with all reasonable despatch, but no later than twelve hours after the person is taken into protective custody, bring the patient before a medical doctor employed by the Government or a medical officer to be examined.
- (6) The medical doctor employed by the Government or medical officer who examines the patient under subsection (5)(b) shall, after conducting the examination, complete the prescribed form to be used in the assessment of the patient.
- (6A) Where a medical officer conducts the examination under subsection (5)(b) and the medical officer considers that the patient should be further detained, the medical officer shall make an emergency detention order in the prescribed form, directing that the patient be detained for up to seventy-two hours in a hospital or other place of safety able to receive and care for that patient.
- (6B) Where a medical doctor employed by the Government conducts the examination under subsection (5)(b) —
 - (a) the medical doctor employed by the Government shall consult a medical officer; and
 - (b) if the medical officer under paragraph (a) considers that the patient should be further detained, the medical officer shall make an emergency detention order in the prescribed form,



directing that the patient be detained for up to seventy-two hours in a hospital or other place of safety able to receive and care for that patient.

- (6C) If the medical officer referred to in subsection (6A) or (6B) makes an emergency detention order under subsection (6B)(b), the medical officer shall —
- (a) in writing, as soon as practicable thereafter, inform the Mental Health Commission of the detention of the person;
 - (b) supply the Mental Health Commission with a copy of the prescribed form under subsection (6); and
 - (c) otherwise comply with any regulations that may be made under this Act in that regard.
- (6D) If the medical officer referred to in subsection (6A) or (6B) forms the opinion that there is no need to further detain the person, the medical officer shall not make an emergency detention order and the patient shall continue to be treated under the assisted outpatient treatment order.”.

Repeal and substitution of section 16 - postal restrictions

7. The principal Act is amended by repealing section 16 and substituting the following sections —

“Restrictions on access to post and electronic networks

- 16.** (1) If, in the opinion of a responsible medical officer, the receipt of postal packets addressed to a patient detained under this Act or access to any electronic network directly or indirectly by a patient detained under this Act may have an adverse effect on the patient —
- (a) the receipt of any such postal packet may be withheld; and
 - (b) access to any electronic network directly or indirectly by the patient may be denied.
- (2) Postal packets addressed by a patient detained under this Act for despatch by the post office or any outgoing electronic communication may be withheld —
- (a) if the addressee has given notice in writing to a responsible medical officer requesting that postal packets or electronic communication addressed to the addressee by the patient should be withheld; or
 - (b) if in the opinion of a responsible medical officer, the postal packet or electronic communication —



- (i) would be unreasonably offensive to the addressee;
 - (ii) is defamatory to other persons, other than the responsible medical officer or persons having care of the patient; or
 - (iii) would be likely to prejudice the interests of the patient.
- (3) Where a postal packet is —
- (a) withheld under subsection (1)(a), it shall be dealt with in accordance with section 16A(1); and
 - (b) withheld under subsection (2), it shall be dealt with in accordance with section 16A(2).
- (4) Where —
- (a) a postal packet or any outgoing electronic communication has been withheld under subsection (1)(a) or (2), respectively; or
 - (b) access to any electronic network has been denied under subsection (1)(b),
- the responsible medical officer shall, subject to subsection (5), inform the patient concerned or the patient's nearest relative of the decision, and the patient concerned or the patient's nearest relative may, within seven days after being so informed, appeal to the Mental Health Commission.
- (5) Notwithstanding subsection (4), if in the opinion of the responsible medical officer, informing the patient concerned of the decision under subsection (4) would be detrimental to the interests of the patient and to the patient's treatment, the responsible medical officer shall inform the patient's nearest relative of the decision.

Procedure where postal packets withheld

- 16A.**(1) Where a responsible medical officer withholds a postal packet in accordance with section 16(1)(a), the responsible medical officer shall ensure that —
- (a) if the address of the sender is known to the responsible medical officer, the postal packet is returned to the sender; or
 - (b) if the address of the sender is not known to the responsible medical officer, the postal packet is —
 - (i) posted to the Mental Health Commission; or
 - (ii) produced to a member of the Mental Health Commission who next visits the hospital after the receipt of the letter or article.

