

MENTAL HEALTH ACT NO. 18 OF 1973

[ASSENTED TO 26 MARCH, 1973]

[DATE OF COMMENCEMENT: 27 MARCH, 1975]

(English text signed by the State President)

as amended by

Mental Health Amendment Act, No. 48 of 1976

Health Laws Amendment Act, No. 36 of 1977 [with effect from 30 March, 1977]

Mental Health Amendment Act, No. 10 of 1978

Mental Health Amendment Act, No. 38 of 1981

Mental Health Amendment Act, No. 3 of 1984

Mental Health Amendment Act, No. 16 of 1985

Special Courts for Blacks Abolition Act, No. 34 of 1986 [with effect from 1 August, 1986]

Transfer of Powers and Duties of the State President Act, No. 97 of 1986 [with effect from 3 October, 1986]

Mental Health Amendment Act, No. 55 of 1987

Mental Health Amendment Act, No. 52 of 1988

Mentally Ill Persons' Legal Interests Amendment Act, No. 108 of 1990

Transfer of Powers and Duties of the State President Act, No. 51 of 1991 [with effect from 29 April, 1991]

Criminal Matters Amendment Act, No. 116 of 1993 [with effect from 1 November, 1993]

General Law Third Amendment Act, No. 129 of 1993 [with effect from 1 September, 1993]

General Law Sixth Amendment Act, No. 204 of 1993 [with effect from 1 March, 1994]

General Law Amendment Act, No. 49 of 1996 [with effect from 4 October 1996]

Abolition of Restrictions on the Jurisdiction of Courts Act, No. 88 of 1996 [with effect from 22 November 1996]

Criminal Law Amendment Act, No. 105 of 1997 [with effect from 13 November, 1998]

Criminal Matters Amendment Act, No. 68 of 1998 [with effect from 28 February, 2002]

ACT

To provide for the reception, detention and treatment of persons who are mentally ill; and to provide for incidental matters.

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CHAPTER 1

DEFINITIONS AND INTRODUCTORY

1. Definitions.-(1) In this Act, unless the context otherwise indicates-

“child” means any person under the age of eighteen years: Provided that any person detained in an institution who is over the age of sixteen years may, with the approval of the Minister, be treated therein as a child up to an age recommended by the hospital board concerned;

“court”, in relation to a patient, means the provincial or local division of the Supreme Court established under the Supreme Court Act, 1959 (Act No. 59 of 1959), which has jurisdiction in the area in which the patient is at the relevant time;

“Director-General” means the Director-General: National Health and Population Development;

[Definition of “Director-General” inserted by s. 1 (a) of Act No. 38 of 1981 and substituted by s. 1 (a) of Act No. 3 of 1984 and by s. 1 (a) of Act No. 55 of 1987.]

Wording of Sections

“hospital board” means a board established under section 47;

“hospital prison for psychopaths”

[Definition of “hospital prison for psychopaths” substituted by s. 1 (b) of Act No. 38 of 1981 and deleted by s. 8 (b) of Act No. 116 of 1993.]

Wording of Sections

“institution” means a state psychiatric hospital or a provincial hospital or a halfway house at which provision has been made for the detention or treatment of persons who are mentally ill, and includes any other place designated by the Minister as a place for the reception and detention of two or more persons suffering from mental illness and in respect of which a licence has been granted under this Act;

“judge” means a judge of the court;

“licensed institution” means an institution licensed under the provisions of section 46;

“magistrate” includes an additional magistrate and an assistant magistrate;

[Definition of “magistrate” substituted by s. 2 of Act No. 34 of 1986.]

Wording of Sections

“Master” means the Master of the Supreme Court as defined in section 1 of the Administration of Estates Act, 1965 (Act No. 66 of 1965);

“medical practitioner” means a person registered as a medical practitioner under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

[Definition of “medical practitioner” substituted by s. 1 (b) of Act No. 3 of 1984.]

Wording of Sections

“mental illness” means any disorder or disability of the mind, and includes any mental disease and any arrested or incomplete development of the mind, and “mentally ill” has a corresponding meaning;

[Definition of “mental illness” substituted by s. 8 (a) of Act No. 116 of 1993.]

Wording of Sections

“Minister” means the Minister for National Health and Welfare;

[Definition of “Minister” substituted by s. 1 of Act No. 10 of 1978, by s. 1 (c) of Act No. 38 of 1981, by s. 1 (c) of Act No. 3 of 1984, by s. 1 (b) of Act No. 55 of 1987 and by s. 6 (a) of Act No. 204 of 1993.]

Wording of Sections

“near relative”, in relation to a patient, means a descendant, ancestor, brother or sister of the patient;

“official curator ad litem” means the official curator ad litem referred to in section 17;

“patient” means a person mentally ill to such a degree that it is necessary that he be detained, supervised, controlled and treated, and includes a person who is suspected of being or is alleged to be mentally ill to such a degree;

“police official” means any member of the Force as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958), and any member of the South African Railways Police Force established under section 43 of the South African Transport Services Act, 1981 (Act No. 65 of 1981);

[Definition of “police official” substituted by s. 1 (d) of Act No. 3 of 1984.]

Wording of Sections

“prescribed” means prescribed under this Act;

“President’s patient”

[Definition of “President’s patient” deleted by s. 6 (a) of Act No. 51 of 1991.]

Wording of Sections

“prison” means a prison established under section 20 of the Prisons Act, 1959 (Act No. 8 of 1959);

*“province”

[Definition of “province” deleted by s. 1 of Act No. 49 of 1996.]

Wording of Sections

“psychiatrist” means a person registered as a psychiatrist under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

[Definition of “psychiatrist” substituted by s. 1 (e) of Act No. 3 of 1984.]

Wording of Sections

“psychopathic disorder”

[Definition of “psychopathic disorder” deleted by s. 8 (b) of Act No. 116 of 1993.]

Wording of Sections

“reception order” means an order issued under section 9 (3);

“registered clinical psychologist” means a clinical psychologist registered as a psychologist under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

[Definition of “registered clinical psychologist” substituted by s. 1 (f) of Act No. 3 of 1984.]

Wording of Sections

“registered nurse” means a person registered as a nurse under section 16 of the Nursing Act, 1978 (Act No. 50 of 1978);

[Definition of “registered nurse” substituted by s. 1 (g) of Act No. 3 of 1984.]

Wording of Sections

“registered social worker” means a person registered as a social worker under section 17 of the Social and Associated Workers Act, 1978 (Act No. 110 of 1978);

[Definition of “registered social worker” substituted by s. 1 (h) of Act No. 3 of 1984.]

Wording of Sections

“regulation” means a regulation made under this Act;

*“Republic”

[Definition of "Republic" deleted by s. 1 of Act No. 49 of 1996.]

Wording of Sections

"Secretary"

[Definition of "Secretary" deleted by s. 1 (d) of Act No. 38 of 1981.]

Wording of Sections

"State patient" means a person detained by order of any court of law or other competent authority at any place pending the signification of the decision of a judge in chambers;

[Definition of "State patient" inserted by s. 6 (b) of Act No. 51 of 1991 and substituted by s. 6 (b) of Act No. 204 of 1993.]

Wording of Sections

"superintendent" means the medical practitioner who is in charge of an institution, and includes any medical practitioner who has been appointed deputy to the superintendent;

"this Act" includes the regulations;

"urgency application" means an application made under section 12.

(2) Any reference in any other law or document contained to the expression "President's patient" or "State President's patient" shall henceforth be construed as a reference to the expression "State patient".

[Sub-s. (2) added by s. 6 (c) of Act No. 51 of 1991.]

2. Mentally ill persons to be detained only under this Act.-No person who suffers from or is alleged to suffer from mental illness shall by reason of such illness be received or detained at any place otherwise than in accordance with the provisions of this Act.

CHAPTER 2

VOLUNTARY PATIENTS, PATIENTS BY CONSENT AND OUT-PATIENTS

3. Voluntary patients.-(1) Any person may on a written application voluntarily submit himself to treatment as a patient at an institution, and if the superintendent of the institution in question is satisfied-

(a) that such person understands the meaning and effect of the application; and

(b) that such person should be so treated,

he may receive, accommodate and treat such person as a patient at the institution in question.

(2) If the person concerned is a minor and is not capable of making the application referred to, the application shall be made by his guardian, and if the person concerned is a minor who is capable of making the application, the application shall be made by him and his guardian.

(3) The superintendent shall, when a patient under this section is received at the institution, inform him of his rights under section 5 relating to his discharge from the institution.

4. Patients by consent.-(1) If the superintendent is not under paragraph (a) of section 3 (1) satisfied that the person concerned understands the meaning and effect of the application, he may receive, accommodate and treat such person as a patient at the institution-

(a) if he is satisfied that such person is in fact not opposed to being so received, accommodated and treated; and

(b) if the application is made, in the case of a minor, by his guardian, or, in the case of a person who is not a minor, by the husband or wife of that person, or, if such person is not married or, if married, if the husband or wife of that person is not available, by a near relative of such person who is at least eighteen years of age: Provided that if the superintendent is satisfied that no guardian, husband, wife or near relative, as the case may be, is available, the application may be made by a medical practitioner, a registered clinical psychologist, a registered social worker, a registered nurse or a member of any other class of person designated by the Minister by notice in the Gazette.

(2) The superintendent shall within seven days after the admission of a patient under subsection (1) forward to the magistrate of the district in which the institution in question is situated a copy of the relevant application and a report on the condition of the patient.

(3) A magistrate of the district in question may-

(a) informally visit the patient concerned;

(b) at any time investigate the circumstances under which the patient was admitted to the institution or is being or was detained therein;

(c) report his findings under paragraph (a) or (b) to the Director-General.

5. Discharge of voluntary patients and patients by consent.-A patient admitted under section 3 or 4 shall be discharged from the institution-

(a) in the case of a patient admitted under section 3-

(i) if he is not a minor, within four days after his request for his discharge;

(ii) if he is a minor over the age of eighteen years, within four days after his or his guardian's request for his discharge; or

(iii) if he is a minor under the age of eighteen years, within four days after his guardian's request for his discharge;

(b) in the case of a patient admitted under section 4, within four days after the request for his discharge by the person who made the application under paragraph (b) of section 4 (1):
Provided that where the patient concerned is a minor over the age of eighteen years and has, in the opinion of the superintendent, recovered sufficiently to understand the meaning and effect of a discharge from the institution, such patient shall, as regards the discharge from the institution, be dealt with as if he had been admitted as a patient under section 3;

(c) if the superintendent or the medical practitioner of the patient certifies in writing that he is fit to be thus discharged; or

(d) if the court or a judge or magistrate or the Director-General directs that he be thus discharged.

6. Provisions of section 8 and 12 may be applied with reference to patients under sections 3 or 4.-An application under section 8 or 12 may at any time be made in respect of a patient referred to in section 3 or 4.

7. Outpatients.-The superintendent of an institution, other than a licensed institution, may provide for the treatment at such institution or elsewhere of any person-

(a) who, in the opinion of the superintendent, is likely to benefit from such treatment;

(b) who voluntarily submits to such treatment; and

(c) who is not detained or accommodated in any institution.

CHAPTER 3

RECEPTION ORDER, CASES OF URGENCY, MENTALLY ILL PERSONS WHO ARE DANGEROUS, OFFICIAL Curator ad Litem, POWERS OF JUDGE OF SUPREME COURT.

8. Application for reception order.-(1) Any person over the age of eighteen years (in this section referred to as the applicant) who believes that any other person is suffering from mental illness to such a degree that he should be committed to an institution, may in the prescribed form apply to the magistrate of the district in which such other person is, for an order that he be received and detained at an institution.

(2) (a) Such application shall-

(i) set out the grounds on which the applicant believes that the person in respect of whom the application is being made is mentally ill to such a degree that he should be committed to an institution;

(ii) state the degree in which the applicant is related by consanguinity or affinity, as the case may be, to the person in respect of whom the application is being made, and if the applicant is not the husband or wife or a near relative of such person, the reason why the application is being made by the applicant instead of by the husband or wife or a near relative; and

(iii) state that the applicant has, within the seven days immediately preceding the date on which the application is signed, personally seen the person in respect of whom the application is being made.

(b) The matters referred to in paragraph (a) shall be verified by the applicant by affidavit or solemn declaration, and no stamp duty shall be payable in respect of such an affidavit or solemn declaration.

(3) The application shall be handed to the magistrate within seven days after the date on which it is signed by the applicant and may be accompanied by a medical certificate in the prescribed form which is dated not earlier than seven days before the date on which the application is signed by the applicant and which relates to the mental condition of the person in respect of whom the application is being made.

9. Magistrate may issue reception order.-(1) The magistrate shall consider the application and may, in his discretion, examine the person in respect of whom the application is made at the place of abode of such person or elsewhere, and he shall, whether or not he makes such examination, call to his assistance two medical practitioners (of whom one shall, if practicable, be the district surgeon) who are not prohibited under section 23 from giving a certificate, and such medical practitioners shall either jointly or separately examine the person concerned and record the result of their examination in the form of a certificate which shall be dated:

Provided that if only one medical practitioner is available, the magistrate may call such medical practitioner to his assistance and such medical practitioner shall thereupon act in the manner hereinbefore set out.

(2) (a) The magistrate may make such additional enquiry into the mental condition of the person concerned as he may deem necessary and may summon any person to appear before him as a witness to testify with regard to the mental condition of such person.

(b) Any person summoned under paragraph (a) and who without sufficient cause fails to appear before the magistrate, shall be guilty of an offence.

(3) If the magistrate, upon consideration of all the evidence relating to the mental condition of the person concerned, including his own observations with regard to such condition, is satisfied that such person is mentally ill to such a degree that he should be detained as a patient, he may issue an order in the prescribed form authorizing the patient to be received, detained and treated at an institution specified in the order, or directing that the patient be received and detained as a single patient under section 10 (1): Provided that in the case of a child who is capable of being taught to manage himself and his affairs to some extent but appears by reason of mental illness to be permanently incapable of receiving proper benefit from the education and training in a special school as defined in the Coloured Persons Education Act, 1963 (Act No. 47 of 1963), and the Educational Services Act, 1967 (Act No. 41 of 1967), or in an ordinary school at which special classes have been instituted for the education and training of children who by reason of mental or behaviour aberrations are unable to benefit sufficiently from the instruction and training given in the ordinary classes at such school, such child shall be received only at an institution in which separate accommodation is provided for such children and in which reasonable provision is made for their care and instruction.

[Sub-s. (3) amended by s. 1 of Act No. 49 of 1996.]

Wording of Sections

(4) The magistrate shall not issue a reception order by virtue of a medical certificate referred to in subsection (1) or (7) if a period longer than fourteen days has elapsed since any examination to which any such certificate relates.

(5) The patient shall, after the issue of a reception order, be removed to the institution or place of detention as a single patient as soon as possible, and the magistrate may, pending the removal of the patient to the institution or place of detention as a single patient, as the case may be, but subject to the provisions of subsection (6), issue such order as he may deem fit for the interim care, control and detention of the patient.

(6) A patient shall not be detained in a prison or police cell unless it is impossible to remove him immediately to the institution or place of detention as a single patient and it appears to the magistrate that the patient cannot be otherwise controlled.

(7) If the application referred to in section 8 (1) is under section 8 (3) accompanied by a medical certificate, the magistrate may, notwithstanding anything to the contrary in this section contained but subject to the provisions of section 23, at his discretion accept such medical certificate in lieu of a medical certificate referred to in subsection (1) of this section as if the certifying medical practitioner had been called to his assistance under the said subsection (1).

(8) All proceedings relating to the issue of a reception order shall be conducted in private.

10. Detention under reception order of patient in single care.-(1) A magistrate may, in any reception order issued by him in respect of any patient, direct that the patient concerned be received and detained as a single patient in the dwelling of some householder and not in an institution.

(2) Such a reception order shall not be issued unless the certifying medical practitioner or practitioners, as the case may be, certify that it would be safe and convenient to receive and detain the patient as a single patient instead of in an institution.

(3) Before such a reception order is issued, the magistrate or such person as the magistrate may appoint for the purpose, shall examine the proposed householder and satisfy himself that the householder is a proper person to have charge of the patient and that his dwelling and its surroundings are suitable for the reception and detention of the patient.

(4) The provisions of this Chapter relating to the reception and detention of a patient at an institution shall, in so far as such provisions can be applied with reference to a single patient, apply with reference to the reception and detention of such a patient.

(5) Any regulation relating to the discharge, escape, transfer or death of a patient detained in an institution, shall apply also with reference to a single patient.

(6) A single patient shall as often as is prescribed or as may be directed by a person authorized thereto by any regulation, be visited by a medical practitioner designated by the person so authorized.

11. Period of validity of reception order and removal from interim place of detention.-(1) A reception order shall authorize the detention of the patient for a period not exceeding forty-two days.

(2) If the patient is detained at a place determined under section 9 (5) pending his removal to the institution or place of detention as a single patient, as the case may be, the magistrate may at any time during the continuance of the reception order by way of endorsement on the order authorize the removal of the patient from the place so determined to the institution or place of detention as a single patient.

12. Procedure in cases of urgency.- (1) In cases of urgency where it is expedient for the welfare of a patient or is in the public interest that the patient be forthwith placed under care and treatment in an institution, an application in the prescribed form may be made by any person over the age of eighteen years to the superintendent of the institution for the reception of the patient therein.

(2) The provisions of section 8 (2) shall mutatis mutandis apply with reference to an application made under this section, except that the reference to seven days in paragraph (a) (iii) of that section shall be construed as a reference to two days.

(3) An urgency application-

(a) shall be accompanied by a medical certificate in the prescribed form relating to the mental condition of the patient, and by a statement that the matter is one of urgency;

(b) if it is not signed by the husband or wife or a near relative of the patient, shall state-

(i) the reason why it is not so signed: Provided that where the application is signed by a medical practitioner, a registered clinical psychologist, a registered social worker or a registered nurse, a statement by the person so signing the application to the effect that no husband, wife or near relative was available or willing to sign the application, shall be deemed to be sufficient compliance with the requirements of this subparagraph;

(ii) the connection between the patient and the person signing the application.

(4) A patient may be received, detained and treated under an urgency application if it appears from the medical certificate accompanying it that the certifying medical practitioner has personally examined the patient not more than two days before the date of his reception.

(5) The superintendent of the institution to which a patient is admitted under an urgency application shall forthwith notify the magistrate of the district in which the institution is situated of such admission, and the magistrate shall thereupon, on production to him of a certified copy of the relevant urgency application and medical certificate, proceed in the same manner as if the application had been one made to him for the issue of a reception order: Provided that where the medical certificate was given by a person disqualified under section 23 from

giving the certificate, the superintendent shall cause the patient to be examined by two medical practitioners not so disqualified, who shall either jointly or separately examine the patient and record the result of their examination in the form of a certificate which shall be dated, and the superintendent shall lay such certificate before the magistrate concerned, who shall then proceed in the same manner as if the application had been one made to him for the issue of a reception order.

(6) If the medical practitioner signing the medical certificate accompanying the urgency application is not prohibited under section 23 from giving the certificate, the magistrate may, in his discretion, accept the certificate as if it had been given by the medical practitioner concerned after having been called in by the magistrate under section 9 (1), and such certificate shall thereupon for the purposes of this Act be deemed to have been given under that section.

(7) If the magistrate after enquiry refuses to issue a reception order, he shall forthwith give notice of his refusal to the superintendent concerned, whereupon the further detention under this section of the patient concerned shall be unlawful.

(8) No person shall by virtue of an urgency application be detained in an institution for a period longer than ten days: Provided that the magistrate may, on the application of the superintendent or the medical practitioner in charge of the patient, extend the said period to no more than twenty-one days.

13. Medical practitioner shall report mentally ill person who is dangerous.-If a medical practitioner is of the opinion that any person examined or treated by him is mentally ill to such a degree that he is a danger to others, he shall forthwith in writing report his opinion to the magistrate of the district in which such person is, or, if the magistrate is not readily available, to a police official who shall forthwith lay the said report before the magistrate concerned.

14. Duty of police official in certain circumstances.-(1) If a police official reasonably believes that any person-

(a) not wandering at large is mentally ill and-

(i) is being neglected or ill-treated by any person having the care or custody of him; or

(ii) is not under safe and proper supervision, care or control; or

(b) is mentally ill and is wandering at large and is unable to take care of himself,

such police official shall forthwith apply for a reception order in respect of such person or cause such an application to be made.

(2) If a police official reasonably believes that a person is mentally ill and is a danger to himself or to others, such police official shall apprehend and detain such person and forthwith report the matter to a magistrate of the district in which such person is.

15. Magistrate may require certain persons to be brought before him.-(1) Any magistrate may-

(a) on sworn information that a person within the district of such magistrate is wandering at large and is unable to take care of himself, or is a danger to others, and that he is believed to be mentally ill; or

(b) on receipt of a report under section 13 or 14 (2),

require a police official to bring or to apprehend and bring such person before a magistrate of the district in question and, whether or not the magistrate so requires such person to be brought before a magistrate, deal with him, as the circumstances may require, as a person in respect of whom an application had been made for a reception order or as a person in respect of whom an urgency application had been made under this Chapter, and the person giving the sworn information under paragraph (a) and the person making the report under paragraph (b) shall for the purposes of this Chapter be deemed to have signed the application for a reception order or the urgency application, as the case may be.

(2) Any magistrate to whom an application is made for a reception order may, at his discretion, at any time before the issue of the reception order, require a police official to bring or to apprehend and bring the person in respect of whom the application is made, before a magistrate of the district in question for the purposes of being examined and of being dealt with in accordance with the provisions of this Chapter.

16. Magistrate may give directions as to detention of person in custody.-(1) Whenever any person in respect of whom an application for a reception order has been made to a magistrate is brought before a magistrate under this Act, the magistrate may, pending the determination of the application, make such order as he thinks fit for the interim care, control and detention of such person in any institution or other place for a period not exceeding twenty-one days.

(2) Where a magistrate receives a report under section 13 or 14 (2) and the patient concerned is being detained in a place other than an institution, the magistrate shall forthwith take steps to have the patient examined by a psychiatrist or other medical practitioner.

(3) Where a patient in respect of whom an urgency application has been made under section 12 (1) cannot immediately be removed to an institution, or where the magistrate is of the opinion that a patient referred to in section 13 or 14 (2) should be dealt with under an urgency application and such patient cannot immediately be removed to an institution, the magistrate

may, pending the removal of the patient to an institution, make such order as he thinks fit for the interim care, control and detention of the patient.

(4) Unless the magistrate is of the opinion that there is a sound reason for doing so, no order referred to in subsection (1) or (3) shall be made for the detention of the person concerned in a prison or police cell.

(5) The magistrate shall take steps for the removal to an institution as soon as possible of a patient referred to in subsection (3).

17. Official curator ad litem.-A Director of Public Prosecutions appointed in terms of section 13 (1) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) shall, within the area for which he has been appointed, be the official curator ad litem of-

(a) any patient detained under a reception order issued by a magistrate or further detained under the order of a judge under section 19;

(b) a State patient; and

(c) a patient referred to in paragraph (a) or (b) who has been conditionally discharged,

if the institution or place where the patient is being detained or the place where the patient is being detained as a single patient or where a patient referred to in paragraph (c) finds himself, is situated within such area.

[S. 17 substituted by s. 2 of Act No. 10 of 1978 and amended by s. 4 of Act No. 68 of 1998.]

Wording of Sections

18. Magistrate and superintendent to transmit to official curator ad litem medical reports on patient.-(1) Where a patient is being detained as a single patient under a reception order, the district surgeon or such medical practitioner as may be in attendance upon the patient shall, on a date not less than two days and not more than eight days after the date of the reception order, examine the patient with regard to his mental condition, and without delay submit his report on such condition to the magistrate concerned, whereupon the magistrate shall, on a date not later than ten days after the date of the reception order, transmit the said report, together with any medical certificate on which the reception order was issued, to the official curator ad litem.

(2) Where a patient is being detained at an institution under a reception order, the superintendent of the institution shall, on the admission of the patient to the institution, examine the patient with regard to his mental condition or have the patient so examined, and,

within seven days after the admission of the patient to the institution, transmit the report on such condition, together with any medical certificate on which the reception order was issued, to the official curator ad litem.

(3) The official curator ad litem shall examine any certificate and report received under subsection (1) or (2) and may, if he considers it necessary, require any further report on the mental condition of the patient to be furnished to him, and the official curator ad litem shall as soon as possible transmit any such certificate and report or further report to the registrar of the court in whose area of jurisdiction the place is situated in which the patient is being detained, and the registrar shall without delay lay such certificate and report before a judge in chambers for consideration under section 19.

19. Powers of judge on considering certificate and report.--(1) A judge in chambers may, after considering the certificate and report submitted to him under section 18-

(a) if satisfied that an order for the further detention of the patient should be made, make such an order for such period as he may deem necessary;

(b) direct that a summons be issued and served on the patient and the official curator ad litem to appear at a place specified in the summons to show cause why the patient should not be declared a mentally ill person and why his detention should not be confirmed or, if necessary, why a curator should not be specially appointed for the care of his person and for the care or administration of his property;

(c) direct that any summons or other process be issued and that the proceedings in the matter be continued, free from any stamp duty or office fees, and that the service of any such summons or process be made in such manner as he may deem expedient;

(d) direct that the patient be discharged immediately;

(e) then or at any subsequent time appoint a curator bonis for the temporary care or custody of any property of the patient and, where it appears to the judge desirable that temporary provision be made for the maintenance or other necessary purposes or requirements of the patient or any member of his family out of any cash or available securities belonging to him and in the possession of his banker or any other person, authorize such banker or other person to pay to the curator bonis such amounts of money as may be deemed necessary, and give directions with regard to the application thereof for the benefit of the patient or for the relief of his family, and generally give such directions as may appear necessary and proper.

(2) The registrar of the court shall transmit any order made or direction given by a judge under paragraph (a) or, as the case may be, paragraph (d) of subsection (1) to the person who has charge of the patient.

(3) Any proceedings under this section with regard to a patient shall be conducted in private, and where an enquiry is held by a judge and the person concerned is detained at an institution, the enquiry shall, in so far as it is practicable, be held at the institution.

20. Person detained may apply to court for enquiry into reasons for detention.-(1) Any person detained under the order of a magistrate or further detained under the order of a judge, including a person detained under the provisions of section 12, 14, 15, 16 or 27, may directly or through a curator ad litem apply to the court for an enquiry into the reasons and grounds for his detention, and the court may make such order as it deems fit.

(2) If the person concerned is detained at an institution, the enquiry shall, in so far as is practicable, be held at the institution.

21. Enquiry into mental condition on behalf of person alleged to be mentally ill.-(1) No provision of this Act shall be construed as preventing any relative or guardian of any person alleged to be mentally ill to such a degree that he should be detained, or any friend of such a person if there is no relative or guardian of such person readily available, from applying directly by petition to the court for an enquiry into the mental condition of such person, whether or not a reception order has previously been issued, and the court may make such order as it deems fit.

(2) If the person concerned is detained at an institution, the enquiry shall, in so far as is practicable be held at the institution.

22. Particulars to be contained in medical certificate.-A medical practitioner giving a certificate under this Chapter-

(a) shall, in addition to the facts stated therein relating to the mental illness of the patient and established at the time of the examination, also state therein if he is able to do so-

(i) any further facts observed by the medical practitioner on any other occasion that are indicative of mental illness on the part of the patient, and the approximate date of that occasion;

(ii) any information communicated to him by other persons indicating mental illness in respect of the patient, together with the names and addresses of such persons;

(iii) the type of mental illness from which the patient is suffering;

(iv) what, in his opinion, the factors are that caused the mental illness;

(v) whether, in his opinion, the patient has homicidal or suicidal tendencies or is in any other way a danger to others or to himself;

(vi) what treatment, if any, has been applied in respect of the mental condition of the patient;

(vii) what the physical health and condition of the patient is like, with special reference to the presence or absence of any communicable disease and recent injury;

(b) shall, in such certificate, state that he is not prohibited under this Act from signing the certificate and that he is a duly registered medical practitioner.

23. Persons prohibited from signing medical certificate.-(1) Except in a case of urgency under section 12, a medical certificate shall not be given under this Chapter by-

(a) the applicant for the reception order;

(b) the superintendent, a medical practitioner or the licensee of the institution to which a patient is to be admitted under a reception order, if issued;

(c) the householder of the dwelling to which a patient is to be admitted under a reception order, if issued;

(d) the husband, wife, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law or the partner, principal or assistant of any person referred to in paragraph (a), (b) or (c) or of the patient or the guardian or trustee of the patient;

(e) the Director-General or a member of a hospital board.

(2) A medical certificate shall not be given under this Chapter by the husband, wife, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law or the partner, principal or assistant of the other medical practitioner giving such a certificate.

24. Director-General may order removal to institution of patient detained or mentally ill.-(1) The Director-General may, at any time after a reception order has been issued for the detention of a patient or the court has ordered the detention of a person as mentally ill, in the prescribed form authorize the removal of such patient or person to some other institution or place, to be detained there until discharged or removed to some other institution or place.

(2) In the case of a patient dealt with under a reception order, if the order of removal under subsection (1) is issued prior to the grant of an order by a judge for the further detention of the patient, notice of the issue of the order of removal shall forthwith be sent by the magistrate to the official curator ad litem.

25. Periodical report on mental condition of patient.-(1) (a) When a patient is detained in an institution or other place, the superintendent or person in charge thereof or the medical practitioner in charge of the patient shall transmit in the prescribed form every six months a report to the Director-General as to the mental condition of the patient.

[Para. (a) substituted by s. 1 (a) of Act No. 68 of 1998.]

Wording of Sections

(b) In the case of a patient detained in an institution under the control of the State and who is not in the medical care of the superintendent of the institution, the superintendent shall arrange for the reports contemplated in paragraph (a) to be submitted to him.

(2)

[Sub-s. (2) deleted by s. 1 (b) of Act No. 68 of 1998.]

Wording of Sections

(3) The Director-General or the superintendent, as the case may be, if he is not satisfied with any report submitted to him under this section, may call for such further information as he may deem necessary or he may himself visit and examine the patient with regard to his mental condition or he may request some other medical practitioner so to examine the patient.

(4) The Director-General or, as the case may be, the superintendent may, after considering any report or further information submitted to him under this section, or after any visit and examination thereunder, order the discharge of the patient or give such other directions as he may think fit.

26. Amendment of application for reception order or of reception order or certificate.-(1) If an application for a reception order or a reception order is, before the reception of the patient or within thirty days thereafter, found to be incorrect or deficient in any respect, a magistrate having jurisdiction may permit the application to be amended or, as the case may be, amend the reception order.

(2) If a medical certificate given under this Chapter is found to be incorrect or deficient in any respect, it may, before the reception of the patient or within thirty days thereafter, with the consent of a magistrate having jurisdiction, be amended by the certifying medical practitioner.

(3) An application, order or certificate amended under this section shall have effect as if the amendment had been contained therein when it was originally signed or issued, as the case may be.

27. Patients certified to be dangerous.-If any person in respect of whom a reception order has been issued under this Chapter, or a State patient, is certified by two medical practitioners, of whom one shall be a psychiatrist, to be dangerous, the patient shall, if possible, be removed to and detained at a maximum security hospital, and any order by any court of law directing that a State patient be detained in a psychiatric hospital or a prison shall, if the patient is so certified to be dangerous, be construed as directing that the patient be detained at a maximum security hospital.

[S. 27 substituted by s. 9 of Act No. 116 of 1993.]

Wording of Sections

CHAPTER 4

STATE PATIENTS AND MENTALLY ILL PRISONERS

28. Minister may order removal of State patient to institution or other place.- (1) When an order committing a State patient to a prison is issued, the officer in charge of the prison shall forthwith transmit a copy of the order to the Director-General, who shall without delay transmit a copy thereof to the Minister together with his observations thereon.

(2) The Minister shall direct that such patient be removed to and detained at an institution or other place specified by the Minister, whereupon such patient shall be removed to and be received at such institution or other place.

(3) Subject to the provisions of this Act relating to discharge, a patient removed or committed under the provisions of this section or any other law to an institution or other place, shall be detained therein or in any other institution or place to which he may be transferred.

29. Discharge of State patient or termination of detention as such.- (1) (a) Where any person is, with reference to a charge of murder or culpable homicide or rape or a charge involving serious violence, or if the court considers it to be necessary in the public interest, detained as a State patient in terms of this Act or section 77 (6) (a) (i) or 78 (6) (b) (i) of the Criminal

Procedure Act, 1977 (Act No. 51 of 1977), a judge in chambers may at any time after the order of detention, on written application being made to him or her-

(i) call for such further information as he or she may consider necessary and may summon any psychiatrist to his or her assistance;

(ii) if he or she is of the opinion that it is desirable to do so, appoint of his or her own accord or at the request of any interested person, on good cause shown, a curator ad litem for the State patient;

(iii) order that the State patient-

(aa) be discharged either absolutely or conditionally;

(bb) cease to be treated as such;

(cc) be further detained as a State patient; or

(dd) be further detained as a patient under Chapter 3;

(iv) make such other order under section 19 as he or she may think fit; or

(v) reject the application if a similar application had been rejected by a judge in chambers less than 12 months before the date of the aforementioned application, without making an order in terms of subparagraphs (iii) or (iv) of this paragraph or make any order he or she thinks fit.

(b) An application referred to in paragraph (a) may be made by-

(i) the official curator ad litem;

(ii) the superintendent of the institution, the person in charge of the place where the State patient is being detained or the medical practitioner in charge of the patient;

(iii) the State patient;

(iv) a relative of the State patient; or

(v) any other person or body on behalf of the State patient.

(c) (i) Such-

(aa) application referred to in paragraph (a);

(bb) recommendation referred to in subparagraph (ii) of paragraph (d); or

(cc) reports referred to in paragraphs (d) and (f),

shall be furnished to the registrar of the court in whose area of jurisdiction the place is situated in which the patient is being detained.

(ii) Such registrar shall forthwith submit-

(aa) such application, reports and recommendations to a judge in chambers; and

(bb) a copy of the application to the official curator ad litem, if the application is made by someone other than the official curator ad litem.

(d) The official curator ad litem shall upon receipt of an application from the registrar as soon as practicable-

(i) obtain reports on the State patient concerned by-

(aa) the superintendent of the institution, the person in charge of the place where the State patient is being detained or the medical practitioner in charge of the patient; and

(bb) two medical practitioners,

and either the said superintendent or one of the said two medical practitioners shall be a psychiatrist, provided that he or she may obtain a report by a registered clinical psychologist in addition to the aforementioned reports;

(ii) compile his or her own report and recommendation regarding the application, provided that if it appears to the official curator ad litem upon the receipt of such application that a similar application in respect of the State patient concerned had been rejected by a judge in chambers less than 12 months before the date of the aforementioned application, he or she may, instead of obtaining the reports referred to in subparagraph (i) of paragraph (a), make a recommendation that the application be rejected; and

(iii) furnish such reports and recommendation to the registrar for submission to a judge in chambers.

(e) The reports referred to in subparagraph (i) of paragraph (d) and subparagraph (i) of paragraph (f) shall contain a detailed history of the State patient and information as to, and a prognosis of, his or her mental condition.

(f) The curator ad litem appointed under subparagraph (ii) of paragraph (a), shall-

(i) obtain a report as contemplated in paragraph (e) by a psychiatrist, but may also obtain a report by a registered clinical psychologist in addition to the report by the psychiatrist;

(ii) adduce any available evidence relevant to the application; and

(iii) perform such other duties as the judge in chambers instructs.

(g) A curator ad litem appointed under subparagraph (ii) of paragraph (a) shall be entitled to the remuneration that the Minister of Justice determines by notice in the Gazette.

[Sub-s. (1) amended by s. 1 of Act No. 48 of 1976, by s. 3 (a) of Act No. 10 of 1978, by s. 9 of Act No. 51 of 1991, by s. 33 (a) of Act No. 129 of 1993 and by s. 7 of Act No. 204 of 1993 and substituted by s. 2 of Act No. 68 of 1998.]

Wording of Sections

(2)

[Sub-s. (2) amended by s. 9 of Act No. 51 of 1991 and deleted by s. 33 (b) of Act No. 129 of 1993.]

Wording of Sections

(3)

[Sub-s. (3) amended by s. 9 of Act No. 51 of 1991 and deleted by s. 33 (b) of Act No. 129 of 1993.]

Wording of Sections

(4)

[Sub-s. (4) substituted by s. 3 (b) of Act No. 10 of 1978 and deleted by s. 33 (b) of Act No. 129 of 1993.]

Wording of Sections

(4A) (a) The hospital board may, by resolution duly adopted and recorded after proper enquiry, and after obtaining a report from the official curator ad litem, conditionally or unconditionally discharge a State patient, other than a State patient referred to in subsection (1), or order that he shall no longer be treated as such.

(b) When any resolution adopted by the board under this subsection is in conflict with the written report to the board of the superintendent of the institution in which the patient is detained, the board shall report the reasons for its resolution to the Minister.

(c) A resolution referred to in paragraph (b) shall not be put into effect unless-

(i) it is the unanimous resolution of the board; and

(ii) it has been confirmed by the Minister.

[Sub-s. (4A) inserted by s. 3 (c) of Act No. 10 of 1978. Sub-para. (ii) substituted by s. 44 of Act No. 88 of 1996.]

Wording of Sections

(5) It shall be the function of the official curator ad litem to decide for the purposes of subsections (1) (a) and (4A) whether any charge with reference to which a person is detained as a State patient, involves or does not involve serious violence.

[Sub-s. (5) substituted by s. 3 (d) of Act No. 10 of 1978 and by s. 33 (c) of Act No. 129 of 1993.]

Wording of Sections

(6) On receipt of the order of the hospital board under subsection (4A) (a) that a State patient shall cease to be treated as such, the superintendent of the institution or the person in charge of the place in which the patient is being detained shall forthwith transmit a report as to the condition of the patient to the official curator ad litem, who shall without delay transmit the report, together with such other documents as may be deemed necessary, to the registrar of the court for submission to a judge in chambers.

[Sub-s. (6) substituted by s. 3 (e) of Act No. 10 of 1978 and by s. 33 (d) of Act No. 129 of 1993.]

Wording of Sections

(7) The judge may thereupon order the further detention of the person concerned as a patient under Chapter 3, or may make such other order under section 19 as he may think fit.

30. Convicted prisoner who is mentally ill.-(1) Whenever it appears to the Minister of Correctional Services that a convicted prisoner in a prison is mentally ill to such a degree that he or she should be detained in an institution, he or she may order the magistrate of the

district in which the prison is situated to cause the mental condition of the prisoner to be enquired into.

[Sub-s. (1) substituted by s. 10 (a) of Act No. 116 of 1993, by s. 8 of Act No. 204 of 1993 and by s. 25 (a) of Act No. 105 of 1997.]

Wording of Sections

(2) Whenever it appears to the officer in charge of the prison in which a convicted prisoner is in custody that the prisoner is mentally ill to the degree referred to in subsection (1), he or she shall report the matter to the magistrate of the district in which the prison is situated.

[Sub-s. (2) substituted by s. 25 (a) of Act No. 105 of 1997.]

Wording of Sections

(3) The magistrate shall on receipt of such order or report, forthwith direct two medical practitioners, of whom one shall, if practicable, be a psychiatrist, to examine the prisoner and to enquire into his mental condition, and such medical practitioners shall in writing certify their finding on the question whether or not the prisoner is mentally ill to the degree referred to: Provided that-

(a) if only one medical practitioner is available, the magistrate may direct that such medical practitioner carry out the examination and enquiry alone;

(b) if any such medical practitioner has, within the period of fourteen days immediately preceding the receipt of the order or report in question, examined the prisoner and enquired into his mental condition, such examination and enquiry shall for the purposes of this section be deemed to have been carried out in pursuance of a direction under this subsection.

(4) If any such medical practitioner certifies that he is doubtful whether the prisoner is mentally ill to the degree referred to, the magistrate may direct that the prisoner be removed for observation to an institution, other than a licensed institution.

[Sub-s. (4) substituted by s. 10 (b) of Act No. 116 of 1993.]

Wording of Sections

(5) A prisoner shall, while he is detained in an institution under subsection (4), be deemed to be in the lawful custody of the person in charge of the prison in which he was detained immediately prior to his removal.

[Sub-s. (5) substituted by s. 10 (b) of Act No. 116 of 1993.]

Wording of Sections

(6) If the unserved portion of the sentence of imprisonment of any prisoner will expire within two months after the date on which the need for an enquiry into his mental condition arises under subsection (1) or (2), the said subsections shall not apply and the magistrate concerned shall deal with the matter under section 8, and the person in charge of the prison in which the prisoner is in custody shall for the purposes of that section act as the applicant for a reception order.

(7)

[Sub-s. (7) substituted by s. 2 of Act No. 38 of 1981 and deleted by s. 25 (b) of Act No. 105 of 1997.]

Wording of Sections

31. Procedure where prisoner removed for observation is found to be mentally ill.-(1) If the magistrate is satisfied that a prisoner removed under section 30 (4) for observation is mentally ill to the degree referred to in section 30 (1), he shall, pending a direction under subsection (2) of this section, make an order for the further detention of the prisoner in the institution in question.

(2) When an order is made under subsection (1), the Minister shall direct either that the prisoner be detained in the institution in question or that he be removed to an institution specified by the Minister.

(3) The magistrate making the order under subsection (1) shall without delay transmit to the Director-General a copy of the order, together with a copy of any medical certificate referred to in section 30 (4) and of any report relating to the prisoner by the superintendent of the institution and of the warrant under which the prisoner was detained in prison.

(4) A prisoner shall, subject to the provisions of section 34 of the Correctional Services Act, 1959 (Act No. 8 of 1959), be detained in the institution referred to in subsection (2) or in any other institution to which he may be transferred.

[S. 31 substituted by s. 11 of Act No. 116 of 1993.]

Wording of Sections

32. Prisoner certified mentally ill.-(1) When a prisoner is under section 30 certified to be mentally ill to the degree referred to in subsection (1) of that section, the magistrate shall in writing direct that the prisoner be kept in custody as a mentally ill person in the prison in which he is being detained, until the Minister issues instructions under subsection (3) of this section as to his disposal.

(2) The magistrate giving such direction shall without delay transmit to the Director-General a copy of the direction, together with a copy of any medical certificate on which the direction is based and of the warrant under which the prisoner was detained in prison.

(3) The Minister shall direct that the prisoner concerned be removed to an institution specified by the Minister, whereupon the prisoner shall be removed to and be received at such institution.

[Sub-s. (3) substituted by s. 12 of Act No. 116 of 1993.]

Wording of Sections

(4) A prisoner shall, subject to the provisions of section 34 of the Correctional Services Act, 1959 (Act No. 8 of 1959), be detained in the institution referred to in subsection (3) or in any other institution to which he may be transferred.

[Sub-s. (4) substituted by s. 12 of Act No. 116 of 1993.]

Wording of Sections

33. Procedure on recovery of mentally ill prisoner.-If two medical practitioners certify in writing that a mentally ill prisoner in respect of whom a direction has been issued that he be detained in an institution has recovered to such an extent that his detention in the institution is no longer necessary, such prisoner shall be dealt with under the provisions of section 34 of the Correctional Services Act, 1959 (Act No. 8 of 1959).

[S. 33 substituted by s. 13 of Act No. 116 of 1993.]

Wording of Sections

34. Procedure on expiry of sentence of mentally ill prisoner.-(1) A mentally ill prisoner shall, upon the expiry of the sentence of imprisonment to which he is subject, cease to be a prisoner.

(2) The warrant under which the prisoner was detained immediately prior to the expiry of the sentence of imprisonment shall be authority for his detention after such expiry pending the issue of an order by a judge under this section.

(3) If one month before the expiry of his sentence of imprisonment such prisoner is still mentally ill to such a degree that it is necessary that he be detained in an institution, the superintendent or other custodian of the prisoner shall without delay transmit a report as to his mental condition, together with such other documents as may be deemed necessary, to the official curator ad litem, who shall without delay transmit the report and documents to the registrar of the court for the consideration of a judge in chambers.

[Sub-s. (3) substituted by s. 14 of Act No. 116 of 1993.]

Wording of Sections

(4) The judge may thereupon order the further detention of such person as a patient under Chapter 3, or may make such other order under section 19 as he may think fit.

35. Periodical report on mental condition of State patient and mentally ill prisoner.-(1) The superintendent of an institution or the person in charge of any other place in which a State patient or a mentally ill prisoner is being detained under this Chapter, shall at the intervals referred to in section 25 report to the Director-General on the mental condition of the patient or prisoner, and the Director-General shall transmit the report to the Minister together with his observations thereon.

(2) The Minister shall on receipt of such report and observations take into consideration the condition, history and circumstances of the patient or prisoner for the purposes of discharging any function under this chapter.

35A. Leave to State patients to be absent from certain institutions or places.-(1) Notwithstanding the order under which a State patient is being detained, the superintendent of the institution or the person in charge of the place where that State patient is being detained may in accordance with the prescribed conditions grant leave to that State patient to be absent from any such institution or place, as the case may be.

(2) Leave granted under subsection (1)-

(a) may at any time be cancelled by the relevant superintendent or person; and

(b) shall be cancelled by any such superintendent or person if the Director-General so directs.

(3) On any such cancellation the relevant superintendent or person shall direct the State patient concerned to return to the institution or place in respect of which leave to be absent has been granted to him.

(4) Any State patient who has been granted leave under subsection (1) to be absent from the institution or place where he is being detained and who-

(a) at the expiry of such leave fails to be back at any such institution or place, as the case may be; or

(b) after he has been directed to return in terms of subsection (3), fails to return forthwith to any such institution or place, as the case may be,

shall, for the purposes of sections 64 and 70, be deemed to have escaped from any such institution or place, as the case may be.

[S. 35A inserted by s. 2 of Act No. 55 of 1987.]

36. Transfer of State patient and mentally ill prisoner.-The Minister may from time to time order the transfer of a State patient or a mentally ill prisoner detained in any institution or other place, to any other institution or place, and such patient or prisoner shall be received and detained in the institution or other place to which he is so transferred.

37. Discharge of mentally ill prisoner.-(1) The State President or the Minister may discharge a mentally ill prisoner either absolutely or conditionally.

[Sub-s. (1) substituted by s. 41 (a) of Act No. 97 of 1986.]

Wording of Sections

(2) The discharge of a mentally ill prisoner who has been convicted of murder, culpable homicide or an offence involving serious violence, shall not be ordered under subsection (1) unless a report on the advisability of such discharge has been obtained from the official curator ad litem.

[Sub-s. (2) substituted by s. 4 of Act No. 10 of 1978.]

Wording of Sections

(3) The State President or the Minister may determine conditions with which a mentally ill prisoner who has been conditionally discharged by him, shall comply after the expiration of the sentence of imprisonment which he is undergoing.

[Sub-s. (3) added by s. 3 of Act No. 38 of 1981 and substituted by s. 41 (b) of Act No. 97 of 1986.]

Wording of Sections

38. Conditional discharge of State patient and mentally ill prisoner.-Where a State patient or a mentally ill prisoner is conditionally discharged under this Chapter-

(a) a report on his condition shall be made to the Minister by such persons at such times and containing such particulars as may be required by the order of discharge or by regulation;

(b) and any condition of the discharge appears to the Minister not to have been complied with, or the conditional discharge is revoked, the Minister may direct that such patient or prisoner be taken into custody and removed to an institution or place specified in the direction, whereupon such patient or prisoner shall be received and detained at such institution or place as if he had been removed thereto under the provisions of this Chapter.

39. Medical practitioner must base certificate or report on personal examination.-A medical practitioner giving a certificate or making a report under this Chapter, shall state therein that he is a duly registered medical practitioner and that the opinion expressed therein has been formed after personal examination or observation of the patient by such medical practitioner.

40. Application of sections 30 to 38.-The provisions of sections 30 to 38 inclusive shall, in so far as those provisions can be applied, mutatis mutandis apply with reference to any person detained in-

(a) a rehabilitation centre established or deemed to have been established under section 18 of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 1971), or under section 3 of the Coloured Persons Rehabilitation Centres Law, 1971, of the Coloured Persons Representative Council of the Republic of South Africa (Law No. 1 of 1971);

(b) a rehabilitation centre registered under section 21 of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971, or under section 6 of the Coloured Persons Rehabilitation Centres Law, 1971; or

(c) a reform school established or deemed to have been established under section 39 of the Children's Act, 1960 (Act No. 33 of 1960).

[Para. (c) amended by s. 1 of Act No. 49 of 1996.]

Wording of Sections

41. Saving of authority of Minister to make order under this Chapter.-No provision of this Act shall be construed as preventing the Minister, if he thinks fit, from issuing any order with reference to any person for whose safe custody the Minister is by law authorized to issue an order.

CHAPTER 5

*PATIENTS FROM OTHER STATES

42. Patient admitted from another State.-(1) The Minister may, subject to the provisions of the Aliens Act, 1937 (Act No. 1 of 1937), the Admission of Persons to the Republic Regulation Act, 1972 (Act No. 59 of 1972), and such conditions as he may determine, on the written application of the government of any State, in consultation with the Minister of Finance authorize in writing the admission of a patient from such State into the Republic for the purposes of detention and treatment in respect of mental health specified in the application.

(2) The authority of the Minister under subsection (1) for the admission of a patient into the Republic shall be subject to the production, at the time of such admission, of a warrant purporting to have been signed by a person authorized to sign such warrant in the State in question and which states that the patient is mentally ill and is to be detained and treated at an institution.

(3) The patient may under such warrant be detained at an institution for a period not exceeding sixty days with effect from the date of the warrant.

(4) The superintendent of the institution to which the patient is admitted shall, on admission of the patient to the institution, transmit the warrant, together with any documents in support of the facts on which the warrant was issued, to the official curator ad litem, whereupon the provisions of this Act shall apply with reference to such patient as if a reception order had been issued in respect of him under Chapter 3.

*42A. Detention for examination of and report on person from state which previously formed part of the Republic.-(1) The superintendent of an institution designated by the Director-General may, subject to an agreement between the Government of the Republic and the Government of a state which previously formed part of the Republic, receive into the institution for the purposes of examination of and report on the mental condition of any person who is charged in such a state with murder, attempted murder, rape or assault with intent to do grievous bodily harm.

(2) The reception of a person in an institution in terms of subsection (1), shall be subject to the production, at the time of such reception, of a warrant purporting to have been signed by a

person authorized to sign such warrant in the state in question and which states that a competent court directed in terms of the law of that state that such person be detained in an institution in the Republic for the purposes of examination of and report on his mental condition.

(3) Such person may under such warrant be detained at such institution for a period not exceeding thirty days, and if such person is in custody when he is so received, he shall, while he is so detained, be deemed to be in the lawful custody of the person or the authority in whose custody he was at the time of such reception.

(4) If after examination it is found that such person is not mentally ill, he shall on the expiry of the period of detention referred to in subsection (3) be returned to the state in which the warrant for his detention was issued.

(5) If after examination it is found that the person is mentally ill, the superintendent of the institution in which the person was received shall, after completion of the examination, transmit the warrant, together with the report in support of the finding, to the official curator ad litem, whereupon the provisions of this Act shall apply with reference to such a person as if a reception order had been issued in respect of him under Chapter 3.

(6) When a person referred to in subsection (5), is discharged as a patient, he shall immediately be returned to the state in which the warrant for his detention was issued.

[S. 42A inserted by s. 4 of Act No. 38 of 1981.]

CHAPTER 6

PATIENTS IN PRIVATE DWELLINGS

43. Where no remuneration is paid for maintenance and care.-(1) If a patient suffering from mental illness is residing in a private dwelling with relatives or other persons who receive no compensation for the maintenance and care of the patient, and the illness has continued for a period of six months and is of such a nature that it requires the compulsory confinement of the patient in the dwelling or any restraint or coercion, the person who has charge of the patient shall give notice of those facts to the magistrate of the district in which such dwelling is situated, and shall transmit to him a certificate, signed by at least one medical practitioner, as to the condition of the patient and stating the reasons (if any) which render it desirable that the patient shall remain under private care, whereupon the magistrate shall transmit the certificate and reasons, together with his remarks thereon, to the Director-General, who shall forward the same to the Minister.

(2) The Minister, if satisfied as to the facts of the certificate, may order that the patient be detained in the dwelling in question for a further period not exceeding six months.

(3) At the expiry of that further period, if the mental illness still continues, the necessary steps shall be taken by the person having charge of the patient to obtain a reception order under Chapter 3.

44. Where a charge is made for maintenance and care.-(1) A patient may, on the authority of a certificate issued by two medical practitioners subject to the provisions of sections 22 (b) and 23, for payment be received and be taken care of in private dwelling for a period not exceeding six months after his mental illness has become apparent.

(2) Such certificate shall, within twenty-four hours after the admission of the patient to such private dwelling, be sent to the magistrate by the person receiving the patient, and the magistrate shall send a copy thereof together with a report on the case to the Director-General.

(3) No such patient shall be treated under this section for a period exceeding six months, unless the provisions of Chapter 3 relating to the issue of a reception order and a further detention order by a judge have been complied with.

(4) Except on the authority of a licence issued under this Act, no person shall permit more than one mentally ill person at the same time to reside in a private dwelling or to be under his care or charge in a private dwelling.

45. Visitation of patients detained under this Chapter.-(1) Any magistrate, on receipt of any report or information that a patient of whom charge is being taken under this Chapter, is being wrongly or cruelly treated or is being neglected in any manner, may visit the patient in the private dwelling where he is being detained and make such investigation and enquiry as he may deem necessary, and the magistrate may thereafter take such steps as he may consider expedient.

(2) The Minister may by regulation prescribe the times at which patients of whom charge is being taken under this Chapter may be visited otherwise than under subsection (1), and by whom such visits may be made.

(3) The magistrate shall, after inspection by himself or by a medical practitioner appointed by him for this purpose, report monthly to the Director-General whether the person in charge of such dwelling is a fit and proper person to have the care of the patient.

CHAPTER 7

LICENSED INSTITUTIONS

46. Licensed institutions for reception of mentally ill persons.-(1) On payment of such fee (if any) as the Minister, in consultation with the Minister of Finance, may prescribe and subject to such terms and conditions as he thinks fit, the Minister may issue a licence to any number of persons to keep an institution for the reception and detention under this Act of mentally ill persons.

(2) The particulars which shall be furnished by any applicant for such a licence shall be as prescribed by regulation.

(3) (a) A licence shall specify the class of mentally ill persons and the number of persons of each sex that may be received and detained in an institution at the same time.

(b) Any condition which is prescribed by regulation shall be deemed to be incorporated in the licence, unless any such condition is in respect of any particular licence amended or varied by the Minister under paragraph (c).

(c) The Minister may from time to time amend a licence with regard to the class of persons and the number of persons of each sex that may be received and detained in the institution, or amend or vary any condition of the licence.

(4) A licence may from time to time be renewed by the Minister or may be revoked by the Minister if the licensee fails to comply with any condition thereof or contravenes any provision of this Act.

(5) (a) A licensed institution may be visited at any time of the day or night by the Director-General or by any person delegated thereto by the Minister.

(b) Such a visit shall take place at least once in every year.

CHAPTER 8

HOSPITAL BOARDS

47. Establishment and constitution of hospital boards.-(1) (a) The Minister may in respect of any institution establish a hospital board which shall consist of at least three and not more than five members appointed by the Minister.

(b) The establishment of such a board and the names of the members thereof shall be published by notice in the Gazette.

(c) Where practicable, one of the members shall be a medical practitioner and one shall be an advocate or attorney duly admitted to practise as such.

(d) The Minister shall designate a member of the board as chairman thereof.

(2) The appointment of a member of the board shall be for a period of three years, and a member shall be eligible for reappointment: Provided that if the number of members of the board is increased to four or five during the period of office of the serving members of the board, the period of office of the additional member or members shall expire on the same date as that of the serving members.

[Sub-s. (2) substituted by s. 2 of Act No. 36 of 1977.]

Wording of Sections

(3) (a) A member of the board shall vacate his office-

(i) if he becomes insolvent or makes an arrangement with his creditors;

(ii) if he is convicted of an offence and sentenced to imprisonment without the option of a fine;

(iii) if he is absent from three consecutive meetings of the board without the leave of the board.

(b) A member may terminate his appointment as a member by giving written notice of one month to the Minister.

(c) In the event of the death, incapacity or resignation of a member, the Minister shall appoint a person to fill the vacancy for the remainder of the period for which such member was appointed, and if such member was appointed by virtue of a qualification referred to in subsection (1) (c), the person appointed by the Minister to fill the vacancy shall, where practicable, be likewise qualified.

(d) The Minister may appoint any person to act as substitute for any member who may be absent on leave.

48. Remuneration of members.-A member of the board who is not an officer or employee in the public service shall, out of moneys appropriated by Parliament, be paid such remuneration and allowances as the Minister may from time to time determine in consultation with the Minister of Finance.

49. Visits by board.-(1) The board shall visit any institution in respect of which it has been appointed at least once in every two months, and shall afford every patient therein an opportunity of making in person any representations he may wish to make to the board.

(2) The board shall investigate any reasonable complaint or grievance made to it by a patient.

50. Reports by board.-The board shall report to the Minister the result of any visit to an institution, and shall from time to time comment on and make such suggestions with regard to the welfare of the patients in any institution with reference to which the board has been established, as it may deem fit.

51. Meetings of board.-(1) (a) The board shall meet for the despatch of business whenever it is necessary, but at least once in every two months, and due notice of every meeting shall be given by the chairman thereof.

(b) The superintendent of the institution concerned shall at each meeting present a report showing-

(i) the number of patients admitted to the institution since the date of the last meeting of the board;

(ii) the number of patients discharged from the institution since that date;

(iii) the number of patients that have died since that date;

(iv) the number of patients that have been transferred to any other institution since that date;

(v) a return of orders made since that date for the seclusion of patients.

(c) Such superintendent may bring any matter to the notice of the board affecting the interests of any patient.

(2) The superintendent shall attend every meeting of the board in an advisory capacity.

(3) Two members of the board shall form a quorum.

52. Minutes of proceedings of board.-(1) Minutes of the proceedings of each meeting shall be kept and regularly entered in a book for the purpose, and shall be submitted to the next ordinary meeting, and, if passed thereat as correct, shall be confirmed by the signature of the member presiding thereat.

(2) Minutes so signed shall, without further proof, be evidence in any court of law of the proceedings of the meeting of which they purport to be minutes.

53. Discharge by board of patient from institution.-(1) The board may, by resolution duly adopted and recorded after proper enquiry, conditionally or unconditionally discharge any patient, other than a mentally ill prisoner and a State patient referred to in section 29 (1), detained in an institution, whether such patient has recovered or has not recovered from his mental illness.

[Sub-s. (1) substituted by s. 5 of Act No. 10 of 1978.]

Wording of Sections

(2) When any resolution adopted by the board under this section is in conflict with the written report to the board of the superintendent of the institution in which the patient is detained, the board shall report the reasons for its resolution to the Minister.

(3) A resolution referred to in subsection (2) shall not be put into effect unless-

(a) it is the unanimous resolution of the board; and

(b) it has been confirmed by the Minister.

[Para. (b) substituted by s. 45 of Act No. 88 of 1996.]

Wording of Sections

54. Board not to have authority over officers of institution.-The board shall have no authority over the superintendent or any other officer of an institution.

CHAPTER 9

CARE AND ADMINISTRATION OF PROPERTY OF MENTALLY ILL PERSONS

55. Notice of reception order and report as to enquiry into estate to be sent to Master.-A magistrate who issues a reception order under this Act shall immediately make full enquiry as to the property or estate of the patient, and if he discovers property which in his opinion necessitates the appointment of a curator, he shall without delay give notice of the reception order to the Master and transmit to him a full report as to the contents of the estate.

[S. 55 substituted by s. 1 of Act No. 52 of 1988.]

Wording of Sections

56. Appointment of curator of property of patient and conditions of appointment.-(1) The court, if satisfied that any person detained as or declared to be mentally ill or detained as a mentally ill prisoner or a State patient is incapable of managing his own affairs, may appoint a curator to perform or exercise on his behalf any particular act in respect of his property or to take care of or administer his property or to carry on any business or undertaking of such person: Provided that, if the estimated value of the property does not exceed R100 000 in respect of the corpus thereof or R24 000 per annum in respect of income, the Master or if the Master so desires a judge in chambers may exercise the powers conferred upon the court by this section.

[Sub-s. (1) amended by s. 2 of Act No. 3 of 1984 and substituted by s. 1 (a) of Act No. 108 of 1990.]

Wording of Sections

(2) The Master may, pending the appointment of a curator under subsection (1), appoint a curator bonis to take the estate of the person concerned into his custody and, if expressly directed by the Master to do so, to carry on, subject to any law which may be applicable, any business or undertaking of the person concerned, and the Master may at any time cancel any such appointment.

(3) The Minister may with the concurrence of the Minister of Justice amend the amounts referred to in subsection (1) by notice in the Gazette.

[Sub-s. (3) added by s. 1 (b) of Act No. 108 of 1990.]

56A. Appointment of curator to certain mentally ill persons not falling within ambit of section 56 and who are indigent.-(1) Any person over the age of eighteen years (in this section referred to as the applicant) may apply to the Master for the appointment of a curator to a person-

(a) who is not detained as or declared to be mentally ill or not detained as a mentally ill prisoner or a State patient;

(b) whom the applicant believes to be suffering from mental illness to such a degree that he is incapable of managing his own affairs; and

(c) in respect of whose property the estimated value does not exceed R100 000 in respect of the corpus thereof or R24 000 per annum in respect of income.

(2) (a) Such application shall-

(i) set out the grounds on which the applicant believes that the person in respect of whom the application is made is mentally ill to such a degree that he is incapable of managing his own affairs;

(ii) state the degree in which the applicant is related by consanguinity or affinity, as the case may be, to the person in respect of whom the application is made, and if the applicant is not the husband or wife or a near relative of such person, the reason why the application is made by the applicant and not by the husband or wife or a near relative;

(iii) state the estimated value of the property in respect of the corpus thereof or in respect of income of the person in respect of whom the application is made, and furnish particulars of the nature of that person's property; and

(iv) state that during the period of seven days immediately preceding the date of the signing of the application, the applicant has on at least one occasion been in the presence of the person in respect of whom the application is made.

(b) The matters referred to in paragraph (a) shall be verified by the applicant by affidavit or solemn declaration.

(c) The applicant shall by registered post give notice to the person in respect of whom the application is made at least 14 days before the application is made that he intends so applying, and proof that notice has been so given, shall accompany such application.

(3) The application shall be handed to the Master within seven days or be transmitted in such a way that it reaches the Master within seven days of the signing thereof and shall be accompanied by a medical certificate or other evidence relating to the mental condition of the person in respect of whom the application is made and his inability to manage his own affairs.

(4) (a) The Master may, in respect of the mental condition or the financial standing of the person in respect of whom the application is made, obtain such further information as he may deem necessary and he may, in particular, request the magistrate of the district in which such person is, or in which he is ordinarily resident, to report to him with regard to the mental condition or the financial standing of such person and to make a recommendation concerning the appointment of a curator to such person.

(b) The magistrate to whom such request is directed by the Master shall-

(i) make such additional enquiry into the mental condition of the person in respect of whom the application is made as he may deem necessary and may summon any person to appear before him as a witness to testify with regard to the mental condition of such person;

(ii) enquire into the financial standing of the person concerned.

(c) Any person summoned under paragraph (b) and who without sufficient cause fails to appear before the magistrate, shall be guilty of an offence.

(5) If the Master is satisfied that the person in respect of whom the application is made-

(a) is a person who is not detained or declared to be mentally ill or not detained as a mentally ill prisoner or a State patient;

(b) is mentally ill to such a degree that he is incapable of managing his own affairs; and

(c) does not possess property the estimated value of which does not exceed R100 000 in respect of the corpus thereof or R24 000 per annum in respect of income,

he may appoint a curator to perform or exercise on behalf of such person any particular act in respect of the property of such person or to take care of or administer the property of such person or to carry on any business or undertaking of such person.

(6) The Master may-

(a) on request of the applicant; or

(b) if he otherwise deems it necessary,

refer the application to a judge in chambers who may exercise the powers conferred upon the Master by subsection (5).

(7) The provisions of section 56 (2) shall apply mutatis mutandis with regard to the appointment of a curator under this section.

(8) The Minister may with the concurrence of the Minister of Justice amend the amounts referred to in subsections (1) and (5) (c) by notice in the Gazette.

[S. 56A inserted by s. 2 of Act No. 108 of 1990.]

57. When duties of Master and curator cease.-(1) Subject to the provisions of section 57A the powers, duties and functions of the Master and the curator shall not cease until the patient is discharged as provided by this Act and it appears from the certificate of the superintendent of the institution in which he was detained or, in the case of a patient detained elsewhere than in an institution, of the person in whose medical care he was, that he is capable of managing his

own affairs: Provided that the curator shall be discharged from office only after he has completed his duties to the satisfaction of the Master.

[Sub-s. (1) substituted by s. 3 (a) of Act No. 108 of 1990.]

Wording of Sections

(2) A certificate issued under subsection (1) shall be sent to the Master by the superintendent of the institution or the person in charge of the place in which the patient was detained.

(3) A curator (including a curator bonis appointed under section 56 (2)), shall find security to the satisfaction of the Master and, unless the court directs otherwise, such security shall be given at the expense of the estate: Provided that the Master shall require security from a curator appointed under section 56A only if he is satisfied that, in the circumstances of the case, it is necessary to do so.

[Sub-s. (3) amended by s. 3 (b) of Act No. 108 of 1990.]

Wording of Sections

(4) When the court has made an order appointing a curator under section 56 (1), a copy of the order shall be lodged with the Master without delay.

(5) The Master shall issue to the curator concerned a certificate that he has been so appointed and that he is authorized as such to have the custody and administration of the estate of the patient.

(6) When any patient for the care and administration of whose estate a curator has been appointed, dies intestate, or when such patient has left a will but there is no executor or none willing to act, such curator shall continue the administration of the estate of such patient and distribute the assets thereof as if he had been appointed an executor.

(7) On the death of a curator the Master shall have power to appoint a new curator.

57A. Termination of appointment of curator referred to in section 56A on recovery of mentally ill person.-(1) A person in respect of whom a curator has been appointed in terms of section 56A and who has recovered from his mental illness to such an extent that he is once again capable of managing his own affairs, may in writing apply to the Master to terminate that appointment, and the Master shall, if he is satisfied that the applicant has recovered sufficiently so that he is capable of managing his own affairs, terminate the appointment: Provided that a curator shall be discharged from office only after he has completed his duties to the satisfaction of the Master.

(2) An application referred to in subsection (1) shall be accompanied by a medical certificate stating-

(a) that a medical examination of the applicant has taken place, and the date of such examination;

(b) the finding in respect of the mental condition of the applicant during the examination; and

(c) the present as well as the expected future ability of the applicant to manage his own affairs.

(3) The Master may obtain such further information as he may deem necessary in order to determine the mental condition and the ability of the applicant to manage his own affairs.

[S. 57A inserted by s. 4 of Act No. 108 of 1990.]

58. Appointment of curator of property without appointment of curator of person.-Where upon an enquiry the court is of the opinion that the person to whom the enquiry relates is mentally ill to such a degree that he is incapable of managing his affairs but that he is capable of managing himself and is not a danger to himself or to others, the court may make such order as it thinks fit for the care and administration of the property of such person, including provision for his maintenance, but it shall not be necessary, unless the court thinks proper to do so, to make any order as to the custody of his person.

59. Order in case of partnership if member thereof declared mentally ill.-When any person being a member of a partnership is declared mentally ill by the court, the court may, by the same or by any subsequent order, dissolve the partnership or make such order as in the circumstances may seem just.

60. Act not to be taken to limit power of court to declare persons mentally ill or to appoint curators.- (1) Nothing in this Act contained shall be construed as limiting any power which the court may by law have to declare any person mentally ill or to appoint a curator to the person or property of any patient.

(2) When it is necessary for any court in connection with proceedings under this Chapter to examine a patient detained in an institution, the examination shall, as far as in the circumstances is practicable, take place at the institution.

60A. Consent to medical treatment of or operation on patient.- (1) (a) If a patient is on account of his mental illness not capable of consenting to medical treatment to, or an operation on, himself, then a curator referred to in section 60 (1) or the patient's spouse, parent, major child or brother or sister may consent to the treatment or operation.

(b) The persons referred to in paragraph (a) shall in the order in which they are enumerated have precedence the one over the other to consent to the medical treatment or operation, and such precedence shall stand unless the consent is being withheld unreasonably or the medical treatment or operation is urgent and the person having precedence cannot, with due regard to the urgency of the medical treatment or operation, be found timeously, in which event the person following in precedence may consent to the medical treatment or operation.

(2) If there are no such persons as are referred to in subsection (1) or if such persons cannot after reasonable inquiry be found and the superintendent of the institution where the patient finds himself is on reasonable grounds of the opinion that the life of the patient is being endangered or that his health is being seriously threatened by his condition and that the patient's condition necessitates the treatment or operation in question, the superintendent may consent to the required treatment or operation.

(3) The consent envisaged in subsections (1) and (2) shall be given in writing.

[S. 60A inserted by s. 6 of Act No. 10 of 1978.]

CHAPTER 10

OFFENCES AND PENALTIES

61. Unauthorized detention of patients.- (1) Any person who, except under the provisions of this Act, receives or detains a patient at any place, or for payment takes charge of a patient or receives a patient for the purposes of accommodating him or detains a patient, shall be guilty of an offence.

(2) The superintendent of a licensed institution shall be guilty of an offence if he receives or detains or permits to be received or detained in the institution concerned a greater number of patients than he is authorized to receive or detain therein under the licence.

62. False statements, entries and wilful obstruction.- Any person shall be guilty of an offence if he-

(a) makes any wilful misstatement of any material fact in any petition, application, statement of particulars, report or reception order under this Act, or when being examined at any enquiry held under this Act;

(b) makes a wilful misstatement of any material fact in any medical certificate or other certificate or in any statement or report on the physical or mental condition of any person under this Act;

(c) knowingly makes in any book, statement or return, any false entry as to any matter with regard to which he is by this Act required to make an entry;

(d) wilfully obstructs any magistrate or the Director-General or any curator, member of a hospital board, medical practitioner, police official or any person specially authorized by the Minister or under any order of court, in the exercise of any power under this Act.

63. Ill-treatment of patient by nurses or other persons in charge of patient.-Any person employed in an institution or other place at which a patient is being detained or any person having the care or charge of a patient, who ill-treats or wilfully neglects the patient, shall be guilty of an offence.

64. Offences in connection with escape of person detained.-Any person who incites any person to escape or entices any person from a place where he is detained under this Act, or who assists any such person in escaping or attempting to escape from any such place, or who secretes any such person, and any person working or employed at or in connection with any such place who permits any such person to escape or to attempt to escape from such place or who connives at any such escape or attempt to escape, shall be guilty of an offence.

65. Employment of male person in personal custody of female patient.-(1) No male person shall in any institution be employed to take personal custody of any female patient or to restrain personally any female patient, except under the continual supervision of a female nurse and then only on the instructions of the superintendent of the institution, who shall report such employment to the Director-General.

(2) (a) This section shall not be construed as prohibiting or as imposing a penalty in respect of the employment of a male person in any case of urgency which, in the opinion of the superintendent of the institution, makes such employment necessary.

(b) Any such employment shall be reported to the Director-General immediately.

66. Carnal intercourse with female patient.-(1) Any person who has carnal intercourse with a female person who is detained under the provisions of this Act or who is under care or control as a mentally ill person, shall be guilty of an offence.

(2) A female person shall, for the purposes of this section, be deemed to be detained in an institution, dwelling or other place, although she is absent therefrom on leave or otherwise or has escaped therefrom, until she is duly discharged therefrom or ceases to be under care or control as a mentally ill person.

(3) It shall be a sufficient defence to any charge under this section if the accused proves that he at the time of the commission of the act in question did not know and had no reasonable cause to believe or to suspect that the female was so detained or was under care or control as a mentally ill person.

(4) The consent of the female shall not be a defence to any such charge.

66A. Prohibition of sketches and photographs and of publication thereof and of false information.-Any person-

(a) not being a member of the Newspaper Press Union of South Africa, who, without the authority in writing of the Director-General-

(i) sketches or photographs or causes to be sketched or photographed any institution, portion of an institution, patient or group of patients, whether within or outside any institution; or

(ii) publishes or causes to be published in any manner whatsoever any sketch or photograph of any patient or group of patients, whether such sketch or photograph was made or taken before or after the issue of a reception order in respect of the patient or in respect of any patient of the group of patients, or of any institution or portion of an institution; or

(b) who publishes or causes to be published in any manner whatsoever any false information concerning the detention, treatment, behaviour or experience in an institution of any patient or any person who was a patient, or concerning the administration of any institution, knowing the same to be false, or without taking reasonable steps to verify such information (the onus of proving that reasonable steps were taken to verify such information being upon the accused),

shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding one year or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

[S. 66A inserted by s. 2 of Act No. 48 of 1976.]

67. Penalties.-(1) Any person who contravenes any provision of this Act in respect of which no penalty is expressly provided shall on conviction be liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months.

[Sub-s. (1) substituted by s. 5 (a) of Act No. 108 of 1990.]

Wording of Sections

(2) Any person who contravenes any provision of sections 61 to 66 inclusive, shall on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

[Sub-s. (2) substituted by s. 5 (b) of Act No. 108 of 1990.]

Wording of Sections

(3) Where it is necessary that a patient be examined in connection with a prosecution under this Act, the examination and enquiry shall, where practicable, take place at the place where the patient is detained.

CHAPTER 11

GENERAL

68. No liability in respect of act done in good faith under this Act.-(1) A person who in good faith and with reasonable care performs any act under any provision of this Act shall not be civilly or criminally liable in respect thereof.

(2) In any proceedings against any person in respect of any such act the burden of proving that he acted without good faith or without reasonable care shall lie upon the plaintiff.

(3) Any proceedings taken against any such person for any such act may, upon application to the court in which they are taken, be stayed if the court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the proceedings are frivolous or vexatious.

(4) No such proceedings shall be commenced after the expiry of three months after the act complained of, or, in the case of a continuance of the cause of action, after the expiry of three months with effect from the termination thereof: Provided that in estimating the said period of three months so limited for the commencement of proceedings, no account shall be taken of any time or times during which the person wronged was lawfully under detention as a mentally ill person or was ignorant of the facts which constitute the cause of action.

[Editorial Note: S. 68 (4) has been declared unconstitutional and invalid as set out in the Constitutional Court Order published under Government Notice No. R.1041 in Government Gazette 22750 of 19 October, 2001. Please note that this declaration of invalidity is valid for and applies to all actions that were instituted on or before 27 April, 1994 and have not yet prescribed before 27 April, 1994 and have not yet at the time of issuing this order been finally disposed of in accordance with a binding decision of a competent court or a valid settlement.]

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

69. Mechanical means of restraint.-(1) Mechanical means of bodily restraint shall not be applied to any patient unless the restraint is necessary for the purposes of surgical or medical treatment or to prevent the patient from injuring himself or others, and in every such case-

(a) a medical certificate describing the mechanical means used and stating the ground on which the certificate is founded, shall be obtained and signed as soon as possible;

(b) the said certificate shall be signed, in the case of a patient in an institution or other place of detention, by a medical officer thereof, and in the case of a single or private patient, by the medical practitioner attending to him;

(c) a full record of restraint by mechanical means shall be kept from day to day;

(d) a copy of the certificate and record under this section shall be sent to the Director-General at the end of every quarter.

(2) For the purposes of this section "mechanical means" shall be such instrument as the Minister may by regulation determine.

70. Escaped patients.-(1) If any person escapes while being conveyed to any institution or other place in accordance with this Act, or if any person lawfully detained in an institution or other place for patients escapes, he may be retaken at any time after his escape by the superintendent of such institution or the person in charge of such other place or by any officer or employee attached to such institution or other place or by any person assisting such superintendent, person in charge, officer or employee, or by the appointed escort of such escaped person or by any police official, and be conveyed to and be received and detained in such institution or other place.

(2) If the person so escaping is considered dangerous or potentially dangerous or is a prisoner or a State patient, the person in charge of the institution or any person in charge of the patient shall forthwith notify the police.

71. Minister may make contributions in respect of maintenance, care and treatment of certain patients.-(1) The Minister may with the concurrence of the Minister of Finance, out of money appropriated for that purpose by Parliament and subject to subsection (2) make contributions in respect of the maintenance of, and essential expenditure incurred in connection with the care and treatment of, a patient.

(2) The circumstances under which and the conditions on which contributions mentioned in subsection (1) may be made, the amounts of such contributions and the manner of accounting for contributions received shall be prescribed by the Minister with the concurrence of the Minister of Finance.

[S. 71 substituted by s. 1 of Act No. 16 of 1985.]

Wording of Sections

72. Procedure when person on board ship or aircraft becomes mentally ill and lands in Republic.-(1) If it appears on oath to any magistrate within two months after the arrival at any seaport or airport in the Republic of any sea-vessel or aircraft that a passenger on or an officer or member of the crew of such sea-vessel or aircraft is mentally ill and has become or is likely to become a public charge as an inmate of an institution or other place for the reception of patients, the magistrate shall require the owner, charterer, agent, master or pilot in command of the sea-vessel or aircraft in question to execute, with two sufficient sureties jointly and severally, a bond in such sum as the magistrate may determine, not exceeding one thousand rand, providing that there shall be paid to the magistrate the maintenance and other expenses of such passenger, officer or member in connection with his detention in such institution or other place at such rates and for such period as may be determined by the magistrate.

(2) Such owner, charterer, agent, master or pilot may be given the option, subject to the approval of the magistrate, of returning the passenger, officer or member concerned to the place where he boarded the sea-vessel or aircraft in question, in which case he shall be liable for the maintenance and other expenses aforesaid of the patient only for so long as he was a public charge.

(3) The sureties shall prove to the satisfaction of the magistrate that they are resident in the Republic and that they individually possess assets of which the value is at least three times the amount of the bond.

(4) No bond shall be required if the passenger, officer or member concerned is, at the date of the arrival of the sea-vessel or aircraft in the Republic, domiciled in the Republic, but the burden of proving such domicile shall be upon the owner, charterer, agent, master or pilot concerned.

(5) If the owner, charterer, agent, master or pilot fails to execute the bond within seven days, he shall be liable to a penalty not exceeding one thousand rand recoverable summarily before the magistrate of the district in which the seaport or airport is, and the sea-vessel or aircraft shall not be cleared until the bond is executed.

73. Holding of enquiries under this Act.-(1) Any magistrate, the Director-General or any other person appointed by any competent court or by the State President or by the Minister to make any enquiry under this Act or in respect of any patient may, if he deems it necessary, summon any person to appear before him to testify on oath with regard to any matter which the magistrate, Director-General or other person is under this Act or by any order of any such court or by the State President or the Minister authorized to enquire into, and such magistrate, Director-General or other person is hereby empowered to administer such oath.

(2) Any person who without sufficient cause fails to appear on a summons issued under subsection (1) shall be guilty of an offence.

(3) Any person summoned under subsection (1) shall be entitled to be paid his expenses as if he were a witness summoned to give evidence at a trial in a criminal case.

74. Execution of orders under this Act.-(1) Any order, warrant or document which may be issued by the Minister or the Minister of Correctional Services, as the case may be, under this Act shall be valid and of force if signed by an officer in the public service designated thereto by the Minister concerned by notice in the Gazette, and shall, if so signed, be proof in any court of law and in any public office and for any other relevant purpose that it was issued under the provisions of this Act.

[Sub-s. (1) substituted by s. 3 (1) of Act No. 55 of 1987 and by s. 9 of Act No. 204 of 1993.]

Wording of Sections

(2) Any such order and any order by a magistrate for the detention or removal of a patient may be executed by the person to whom it is addressed or by any police official, and, when it relates to a person not under detention, may be executed as if it were a warrant for the arrest of a person charged with an offence, and it shall be the duty of every police official to aid in the execution of any order under this Act.

74A. Non-compliance with conditions of discharge and review of conditions.-(1) If a State patient or a mentally ill prisoner who has been discharged conditionally under sections 29 and 37 (1), respectively-

(a) does not comply with any condition of his discharge, the Minister may-

(i) revoke the conditional discharge;

(ii) amend or revoke any condition of discharge;

(b) complies with the conditions of his discharge, he shall be deemed to have been unconditionally discharged.

[Sub-s. (1) amended by s. 5 (a) of Act No. 38 of 1981.]

Wording of Sections

(1A) If any person referred to in section 37 (3) fails to comply with any condition determined by the State President, the Minister may-

(a) amend or revoke any such condition; or

(b) direct that such person be taken into custody and removed to an institution or place specified in the direction, whereupon he shall be received and detained at such institution or place as if he had been removed thereto under the provisions of Chapter 4.

[Sub-s. (1A) inserted by s. 5 (b) of Act No. 38 of 1981.]

(2) A State patient or a mentally ill prisoner who has been discharged conditionally under sections 29 and 37 (1) and any person referred to in section 37 (3), may apply to the Minister that the Minister review the conditions of his discharge or the conditions with which he shall comply after the expiration of the sentence of imprisonment, as the case may be, and the Minister may make any order he deems fit.

[S. 74A inserted by s. 7 of Act No. 10 of 1978. Sub-s. (2) substituted by s. 5 (c) of Act No. 38 of 1981.]

Wording of Sections

74B. Delegation of powers and duties.-(1) Where-

(a) the Minister deems it necessary for the proper exercise of any power or performance of any duty conferred upon or assigned to him by this Act, he may in writing authorize the Director-General or any other officer in the Department of National Health and Population Development to exercise such power or perform such duty, except the power to make regulations;

(b)

[Sub-s. (1) substituted by s. 4 (a) of Act No. 55 of 1987. Para. (b) deleted by s. 10 (a) of Act No. 204 of 1993.]

Wording of Sections

(2) The-

(a) Director-General may in writing authorize any officer in the Department of National Health and Population Development; or

(b)

[Para. (b) deleted by s. 10 (b) of Act No. 204 of 1993.]

Wording of Sections

to exercise or perform in general or in a particular case or in cases of a particular nature, any power or duty conferred upon or assigned to him by or under this Act.

[Sub-s. (2) substituted by s. 4 (b) of Act No. 55 of 1987.]

Wording of Sections

(3) The superintendent of an institution may, with the approval of the Director-General, in writing authorize any medical practitioner attached to that institution to exercise or perform in general or in a particular case or in cases of a particular nature, any power or duty conferred or imposed on the superintendent by or under this Act.

[S. 74B inserted by s. 7 of Act No. 10 of 1978 and amended by s. 6 of Act No. 38 of 1981.]

Wording of Sections

75. Medical certificate evidence of certain facts.-Any medical certificate given or medical report made under or for the purposes of this Act shall be prima facie proof of the facts stated therein, in so far as such facts are within the knowledge of the person giving the certificate or making the report, and shall be proof also of the opinion expressed therein by the certifying medical practitioner on such facts, to the same extent as if the matters appearing therein had been verified on oath.

76. Visitation of patients.-Any person detained under the provisions of this Act may be visited at any time by the Director-General or by any person delegated thereto by the Minister, and such visit may be made without prior notice.

77. Regulations.- (1) The Minister may make regulations, not inconsistent with this Act, in respect of the following matters-

(a) the control of insulin coma, electro convulsive therapy, leucotomy or such other operations or medical or therapeutic treatment of patients in institutions as, in the opinion of the Minister, should be controlled by regulation;

(b) the powers and functions of voluntary organisations relating to mental health services;

(c) the establishment of maximum security hospitals for dangerous patients;

(d)

[Para. (d) deleted by s. 15 of Act No. 116 of 1993.]

Wording of Sections

(e) the establishment of institutions for State patients;

(f) the observation, detention and treatment of cases referred to an institution by courts of law;

(g) the observation and treatment of alcoholics and drug dependants who are mentally ill;

(h) the establishment of child guidance clinics and child psychiatric units;

(i) the provision of community psychiatric services, after-care and follow-up services;

(j) the functions, powers and duties of employees in institutions under the control of the State, other than a provincial administration;

(k) the discharge of patients on recovery or on the application of relatives or friends, or on leave of absence, and the boarding out of patients from institutions;

(l) the removal or transfer of patients to an institution or place or from one institution or place to another institution or place, including the temporary transfer of patients to any specified place for such period as may be deemed expedient;

(m) the books which shall be kept in institutions or otherwise with reference to any patient and the entries which shall be made therein, and the accounts, returns, reports, extracts, copies, statements, notices, documents and information which shall be sent to the Minister or such other authority or person as the Minister may direct;

(n) the persons by whom, the times when and the manner in which such entries shall be made or, as the case may be, such accounts, returns, reports, extracts, copies, statements, notices, documents and information are to be sent in regard to any institution or patient;

(o) the payment of maintenance and expenses incurred in connection with the detention, treatment and maintenance of any person in a State institution, other than a provincial hospital;

[Para. (o) substituted by s. 3 of Act No. 36 of 1977.]

Wording of Sections

(p) the management of licensed institutions and patients under single care;

(q) the visitation of State institutions, other than provincial hospitals, under the control of the State where patients are detained;

(r) the care and comfort of patients under the control of the State, other than a provincial hospital;

(s) the forms which shall be used for the purposes of this Act;

(t) any matter which may be prescribed under this Act or which may under this Act be regulated by regulation,

and generally in respect of any matter which, in the opinion of the Minister, is necessary for the better administration and achievement of the purposes of this Act.

(2) The Minister may make different regulations in respect of different classes of persons or different population groups.

78.

[S. 78 repealed by s. 1 of Act No. 49 of 1996.]

Wording of Sections

79. Repeal of laws.-(1) Subject to the provisions of subsection (2), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

(2) Any regulation, application, report, enquiry, finding, request, return, direction, examination or appointment made, held or given or any medical certificate or other certificate, reception order or other order, summons, warrant or authority issued, made or given, or any condition imposed, or any board established or any other act done under any provision of any law repealed by this Act and which was of force immediately prior to the commencement of this

Act, shall be deemed to have been made, held, issued, given, imposed, established or done, as the case may be, under the corresponding provision of this Act.

80. Short title and date of commencement.-This Act shall be called the Mental Health Act, 1973, and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.

Schedule

LAWS REPEALED

Number and year of law Title Extent of repeal

Act No. 38 of 1916 Mental Disorders Act, 1916 The whole, except sections 27 to 29bis inclusive.

Act No. 22 of 1926 South-West Africa Mental Disorders Act, 1926 The whole, except in so far as it applies sections 27 to 29bis inclusive of Act No. 38 of 1916 to South West Africa.

Act No. 7 of 1944 Mental Disorders Amendment Act, 1944 The whole.

Act No. 13 of 1946 Mental Disorders Amendment Act, 1946 The whole.

Act No. 37 of 1957 Mental Disorders Amendment Act, 1957 The whole.

Act No. 14 of 1961 Mental Disorders Amendment Act, 1961 The whole.

Act No. 78 of 1963 Mental Disorders Amendment Act, 1963 The whole.

Act No. 32 of 1970 Mental Disorders Amendment Act, 1970 The whole.

MENTAL HEALTH AMENDMENT ACT

NO. 10 OF 1978

[ASSENTED TO 3 MARCH, 1978]

[DATE OF COMMENCEMENT: 10 MARCH, 1978]

(Afrikaans text signed by the State President)

ACT

To amend the Mental Health Act, 1973, with regard to definitions; in order to extend the category of persons with regard to whom an attorney-general is the official curator ad litem; to empower hospital boards to discharge a certain category of President's patient and to order that such patient be no longer treated as such; to do away with the necessity of obtaining a report from a hospital board prior to the discharge of a mentally ill prisoner; and to provide for consent in certain circumstances by other persons to medical treatment or surgical operation of certain mentally ill persons; for measures where the conditions of a conditional discharge are complied with or not complied with and for the review of such conditions; and for the delegation of powers and duties; and to provide for incidental matters.

1. Amends section 1 of the Mental Health Act, No. 18 of 1973, by substituting the definition of "Minister".
2. Substitutes section 17 of the Mental Health Act, No. 18 of 1973.
3. Amends section 29 of the Mental Health Act, No. 18 of 1973, as follows:-paragraph (a) substitutes subsection (1) (c); paragraph (b) substitutes subsection (4); paragraph (c) inserts subsection (4A); paragraph (d) substitutes subsection (5); and paragraph (e) substitutes subsection (6).
4. Amends section 37 of the Mental Health Act, No. 18 of 1973, by substituting subsection (2).
5. Amends section 53 of the Mental Health Act, No. 18 of 1973, by substituting subsection (1).
6. Inserts section 60A in the Mental Health Act, No. 18 of 1973.
7. Inserts sections 74A and 74B in the Mental Health Act, No. 18 of 1973.
8. Short title.-This Act shall be called the Mental Health Amendment Act, 1978.

MENTAL HEALTH AMENDMENT ACT

NO. 16 OF 1985

[ASSENTED TO 12 MARCH, 1985]

[DATE OF COMMENCEMENT: 3 APRIL, 1985]

(English text signed by the State President)

ACT

To amend the Mental Health Act, 1973, so as to authorize the Minister to make contributions in respect of the maintenance of, and expenditure incurred in connection with the care and treatment of, certain patients.

1. Substitutes section 71 of the Mental Health Act, No. 18 of 1973.
2. Short title.-This Act shall be called the Mental Health Amendment Act, 1985.

MENTAL HEALTH AMENDMENT ACT

NO. 3 OF 1984

[ASSENTED TO 22 FEBRUARY, 1984]

[DATE OF COMMENCEMENT: 2 MARCH, 1984]

(English text signed by the State President)

ACT

To amend the Mental Health Act, 1973, so as to substitute certain obsolete expressions and to increase the amounts which are relevant to the appointment of a curator of the property of a mentally ill person by a judge in chambers or a Master of the Supreme Court; and to provide for matters connected therewith.

1. Amends section 1 of the Mental Health Act, No. 18 of 1973, as follows:-paragraph (a) substitutes the definition of "Director-General"; paragraph (b) substitutes the definition of "medical practitioner"; paragraph (c) substitutes the definition of "Minister"; paragraph (d) substitutes the definition of "police official"; paragraph (e) substitutes the definition of "psychiatrist"; paragraph (f) substitutes the definition of "registered clinical psychologist"; paragraph (g) substitutes the definition of "registered nurse"; and paragraph (h) substitutes the definition of "registered social worker".

2. Amends section 56 (1) of the Mental Health Act, No. 18 of 1973, by substituting the proviso.

3. Short title.-This Act shall be called the Mental Health Amendment Act, 1984.

MENTAL HEALTH AMENDMENT ACT

NO. 55 OF 1987

[ASSENTED TO 9 SEPTEMBER, 1987]

[DATE OF COMMENCEMENT: 23 SEPTEMBER, 1987]

(Unless otherwise indicated)

(English text signed by the State President)

ACT

To amend the Mental Health Act, 1973, so as to alter obsolete designations; to authorize the Minister of Justice to assign powers or duties entrusted to him in terms of the said Act; and to grant leave to President's patients to be absent from institutions or places where they are being detained; and to provide for incidental matters.

1. Amends section 1 of the Mental Health Act, No. 18 of 1973, as follows:-paragraph (a) substitutes the definition of "Director-General"; and paragraph (b) substitutes the definition of "Minister".
2. Inserts section 35A in the Mental Health Act, No. 18 of 1973.
3. Amends section 74 of the Mental Health Act, No. 18 of 1973, by substituting subsection (1) (date of commencement 22 August, 1975).
4. Amends section 74B of the Mental Health Act, No. 18 of 1973, as follows:-paragraph (a) substitutes subsection (1); and paragraph (b) substitutes subsection (2).
5. Short title.-This Act shall be called the Mental Health Amendment Act, 1987.

MENTAL HEALTH AMENDMENT ACT

NO. 38 OF 1981

[ASSENTED TO 24 FEBRUARY, 1981]

[DATE OF COMMENCEMENT: 11 MARCH, 1981]

(English text signed by the State President)

ACT

To amend the Mental Health Act, 1973, so as to insert a definition of "DirectorGeneral"; to substitute the definitions of "hospital prison for psychopaths" and "Minister"; to delete the definition of "Secretary"; to substitute certain expressions; and to provide that the State President may determine conditions with which a mentally ill prisoner who has been

conditionally discharged from any institution shall comply after the expiration of his imprisonment; for measures where the conditions are not complied with and for the review of such conditions; and for the detention for examination of and report on any person from a state which previously formed part of the Republic; and to provide for incidental matters.

1. Amends section 1 of the Mental Health Act, No. 18 of 1973, as follows:-paragraph (a) inserts the definition of "Director-General"; paragraph (b) substitutes the definition of "hospital prison for psychopaths"; paragraph (c) substitutes the definition of "Minister"; and paragraph (d) deletes the definition of "Secretary".
2. Amends section 30 of the Mental Health Act, No. 18 of 1973, by substituting subsection (7).
3. Amends section 37 of the Mental Health Act, No. 18 of 1973, by adding subsection (3).
4. Inserts section 42A in the Mental Health Act, No. 18 of 1973.
5. Amends section 74A of the Mental Health Act, No. 18 of 1973, as follows:-paragraph (a) substitutes in subsection (1) the words preceding paragraph (a); paragraph (b) inserts subsection (1A); and paragraph (c) substitutes subsection (2).
6. Amends section 74B of the Mental Health Act, No. 18 of 1973, by inserting the words "Welfare and Pensions" after the word "Health", wherever it occurs.
7. Substitution of word "Secretary" in Act 18 of 1973.-The principal Act is hereby amended by the substitution for the word "Secretary", wherever it occurs, of the expression "Director-General".
8. Short title.-This Act shall be called the Mental Health Amendment Act, 1981.

MENTAL HEALTH AMENDMENT ACT

NO. 48 OF 1976

[ASSENTED TO 22 MARCH, 1976]

[DATE OF COMMENCEMENT: 7 APRIL, 1976]

(Afrikaans text signed by the State President)

ACT

To amend the Mental Health Act, 1973, so as to delete certain provisions which have lapsed; to further regulate the discharge of State President's decision patients; and to prohibit

sketches and photographs and the publication of information concerning patients and institutions in certain circumstances.

1. Amends section 29 (1) of the Mental Health Act, No. 18 of 1973, by substituting paragraph (a).
2. Inserts section 66A in the Mental Health Act, No. 18 of 1973.
3. Short title.-This Act shall be called the Mental Health Amendment Act, 1976.

MENTAL HEALTH AMENDMENT ACT

NO. 52 OF 1988

[ASSENTED TO 5 MAY, 1988]

[DATE OF COMMENCEMENT: 20 MAY, 1988]

(English text signed by the State President)

ACT

To amend the Mental Health Act, 1973, so as to further provide for the notification of reception orders.

1. Substitutes section 55 of the Mental Health Act, No. 18 of 1973.
2. Short title.-This Act shall be called the Mental Health Amendment Act, 1988.

MENTAL HEALTH AMENDMENT ACT

NO. 19 OF 1992

[ASSENTED TO 3 MARCH, 1992]

[DATE OF COMMENCEMENT TO BE PROCLAIMED]

(Afrikaans text signed by the State President)

ACT

To amend the Mental Health Act, 1973, so as to delete certain obsolete definitions; to provide for entering into agreements with other States relating to the detention, reception and

treatment of patients and persons from such other States in institutions in the Republic, and their discharge from such institutions; and to exclude the territory of South West Africa from the application of the Act; and to provide for matters connected therewith.

1. Amendment of section 1 of Act 18 of 1973, as amended by section 1 of Act 10 of 1978, section 1 of Act 38 of 1981, section 1 of Act 3 of 1984, section 2 of Act 34 of 1986, section 1 of Act 55 of 1987 and section 6 of Act 51 of 1991.-Section 1 of the Mental Health Act, 1973 (hereinafter referred to as the principal Act), is hereby amended by the deletion of the definitions of "province" and "Republic".

2. Substitution of heading to Chapter 5 of Act 18 of 1973.-The following heading is hereby substituted for the heading to Chapter 5 of the principal Act:

"PATIENTS AND PERSONS FROM OTHER STATES"

3. Substitution of section 42A of Act 18 of 1973, as inserted by section 4 of Act 38 of 1981.-The following section is hereby substituted for section 42A of the principal Act:

"Minister may enter into agreements relating to detention, reception, treatment and discharge of patients and persons from other States"

42A. (1) The Minister may, on such conditions as he may deem fit, but subject to the provisions of this Act and any other law, and in consultation with the Minister of Finance, enter into an agreement with any other State providing for-

(a) the detention in an institution in the Republic of any person who is charged in such a State of an offence specified in such agreement, for the purposes of examination of and report on the mental condition of such person;

(b) the continued detention in an institution in the Republic and discharge from such an institution of a person who, after an examination referred to in paragraph (a), is found to be mentally ill;

(c) the reception and treatment of a patient from such a State in an institution in the Republic and his discharge from such an institution.

(2) No such agreement or amendment thereof shall be of force or effect-

(a) until it has been published by the State President by proclamation in the Gazette; or

(b) unless provision is made, by the laws of the other State or by the agreement, for the issue of a warrant by a court or other competent authority or person in that State for the detention or reception as referred to in subsection (1).

(3) Subject to the provisions of subsection (1), the relevant provisions of this Act and of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall apply to any person detained or treated in an institution in the Republic under this section, as if he had been referred to such institution in terms of this Act or the Criminal Procedure Act, 1977.”.

4. Repeal of section 78 of Act 18 of 1973.-Section 78 of the principal Act is hereby repealed.

5. Saving.-Notwithstanding the amendment of section 42A of the principal Act by section 3 of this Act, any person from a state which previously formed part of the Republic who is detained in an institution referred to in the principal Act in the Republic on the date of commencement of this Act, shall be dealt with as if this Act had not been passed.

6. Short title and commencement.-This Act shall be called the Mental Health Amendment Act, 1992, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

MENTALLY ILL PERSONS' LEGAL INTERESTS AMENDMENT ACT

NO. 108 OF 1990

[ASSENTED TO 28 JUNE, 1990]

[DATE OF COMMENCEMENT: 13 JULY, 1990]

(English text signed by the State President)

ACT

To amend the Mental Health Act, 1973, and the Administration of Estates Act, 1965, so as to make further provision for the appointment of a curator for a mentally ill person who is not detained as or declared to be mentally ill or not detained as a mentally ill prisoner or a President's patient; to further regulate the furnishing of security by a curator; to regulate the termination of the appointment of a curator on the recovery of such a mentally ill person; and to increase certain fines; and to provide for matters connected therewith.

1. Amends section 56 of the Mental Health Act, No. 18 of 1973, as follows:-paragraph (a) substitutes subsection (1); and paragraph (b) adds subsection (3).

2. Inserts section 56A in the Mental Health Act, No. 18 of 1973.
3. Amends section 57 of the Mental Health Act, No. 18 of 1973, as follows:-paragraph (a) substitutes subsection (1); and paragraph (b) adds the proviso to subsection (3).
4. Inserts section 57A in the Mental Health Act, No. 18 of 1973.
5. Amends section 67 of the Mental Health Act, No. 18 of 1973:-paragraph (a) substitutes subsection (1); and paragraph (b) substitutes subsection (2).
6. Amends section 73 (1) of the Administration of Estates Act, No. 66 of 1965, by substituting paragraph (b).
7. Amends section 77 of the Administration of Estates Act, No. 66 of 1965, by substituting subsection (1).
8. Short title.-This Act shall be called the Mentally Ill Persons' Legal Interests Amendment Act, 1990.