ANTIGUA AND BARBUDA



MENTAL HEALTH CARE BILL 2026

No. of 2026

ANTIGUA AND BARBUDA

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CLAUSES

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ANTIGUA AND BARBUDA

MENTAL HEALTH CARE BILL 2026

No. of 2026

AN ACT to provide for the enhancement of mental health care services and its delivery, to protect and enforce the rights of persons with or exhibiting symptoms of mental illness, to promote community-based care for persons with mental illness, and to integrate mental and physical health care and for other connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows —

PART I

PRELIMINARY

1. Short Title

(1) This Act may be cited as the Mental Health Care Act 2026.

(2) This Act shall come into operation on a date appointed by the Minister by Notice published in the Gazette.

2. Interpretation

In this Act —

"advance directive" means instructions given in advance by a person that sets out his or her wishes and preferences in relation to mental health care and treatment in the event that it becomes necessary;

"Board" means the Mental Health Services Board established under section 70;

"caregiver" means a person who resides with and is responsible for providing care to a person with a mental illness and includes a relative or any other person who performs this function;

"child" means a person who is -

(a) below the age of eighteen (18) years; or

(b) eighteen (18) years of age or older but has a mental illness and who is living with or is fully supported by a parent or guardian;

"court" means the High Court, Magistrate's Court, or Family Court as the case may be in the particular circumstances;

"consultant-in-charge" means a psychiatrist or physician appointed to be in charge of one or more mental health facilities;

"facilitated admission" means admission of a person who is diagnosed with or is exhibiting symptoms of a mental illness under the provisions of section 36;

"Government" means the Government of Antigua and Barbuda;

"guardian" means –

(a) a person who has legal responsibility for a child or who has primary physical custody of a child with mental illness; or

(b) a person who is appointed under any law as the legal guardian of a person with a mental illness;

"health facility" means any facility providing health care and treatment which is not a mental health facility;

"medical practitioner" means a person registered and licensed by the Medical Council;

"mental health care" includes biological and psychological treatments, social care for mental illness, and curative and rehabilitative services, provided either in a health facility or mental health facility or in the community to a person who has a mental illness and "mental health treatment" shall carry the same meaning;

"mental health facility" means a facility which is a public or private hospital, or a primary health care facility or treatment facility in the community, specifically providing care and treatment for persons with a mental illness;

"mental health professional" means any health professional trained in mental health care or mental health treatment and duly licensed and registered with the respective regulatory authority or the Medical Council;

"mental health service provider" means any person, body, organization, institution or mental health facility providing mental health care or treatment to a person who is diagnosed with or is exhibiting symptoms of a mental illness;

"mental illness" refers to an impairment or disorder of the mind that has been diagnosed in accordance with accepted medical standards for the diagnosis of mental disorders as set out in section 4, but does not include intellectual disability of itself;

"Minister" means the Minister with responsibility for health;

"nominated representative" means a person appointed or declared under sections 26, 30 or 31, as the particular case permits, to be the nominated representative and to make decisions on behalf of a child, or person diagnosed with or exhibiting signs of a mental illness;

"person subject to criminal proceedings**"** means a person who has been —

(a) charged with a criminal offence and is granted bail or is remanded in custody;

(b) convicted and is awaiting sentencing; or

(c) convicted of a crime and is serving a custodial sentence;

"prescribed" means prescribed by regulations made under the Act;

"restraint" means to prevent a person from having free movement of their limbs whether it is done by physical, chemical, or mechanical means;

"Tribunal" means the Mental Health Services Tribunal established under section 60.

3. Objectives of the Act

The objectives of this Act are —

(a) to facilitate the provision of comprehensive mental health care in Antigua and Barbuda;

(b) to protect the rights and fundamental freedoms of each person who receives care and treatment for a mental illness; to ensure that each person who is assessed and treated under this Act, is informed of their rights under this Act;

(c) to enable and support each person who is diagnosed with or is exhibiting symptoms of a mental illness —

(i) to make or participate in, decisions about their assessment, treatment and recovery; and

(ii) to exercise their basic human rights under this Act;

(d) to provide oversight and safeguards in the assessment of each person who is diagnosed with or is exhibiting symptoms of a mental illness and the treatment of such person;

(e) to promote recovery of each person who is diagnosed with or is exhibiting symptoms of a mental illness;

(f) to provide a legislative scheme for the assessment and for the treatment of a person who are diagnosed with or are exhibiting symptoms of a mental illness;

(g) to provide for the mental health care of persons subject to criminal proceedings or imprisoned;

(h) to establish a Mental Health Care Board; and

(i) to establish a Mental Health Review Tribunal.

4. Determination of mental illness

(1) A mental illness shall be diagnosed in accordance with nationally or internationally accepted medical standards, including the latest edition of the International Classification of Diseases of the World Health Organization.

(2) A person shall not be diagnosed as having a mental illness solely on the basis of–

(a) his or her economic or social status or membership of a cultural, racial or religious group of the person;

(b) the nonconformity of the person with moral, social, cultural, work or political values or religious beliefs prevailing within the community of that person;

(c) his or her expression, refusal to express, or failure to express a particular sexual preference, gender identity, or sexual orientation, or engagement in sexual promiscuity;

(d) his or her engagement in illegal conduct, antisocial behaviour, or previous involvement in family conflict of the person; or

(e) any other reason not directly relevant to the mental health status of the person.

(3) A person's past treatment or hospitalization in a mental health facility, shall not, by itself, justify any present or future diagnosis or determination of a mental illness.

(4) A person shall be diagnosed as having a mental illness only by a mental health professional duly licensed and registered as recognized by this Act.

(5) A person diagnosed with a mental illness shall not be regarded as being of an unsound mind unless a competent court has declared that person to be of an unsound mind.

(6) A person shall not be considered as having a mental illness by reason only of intellectual disability of itself, which is a condition of arrested or incomplete development of the mind, characterised by subnormality of intelligence.

PART II

RIGHTS AND PROTECTION OF PERSONS WITH MENTAL ILLNESS

5. Reasonable Accommodation

In this Part –

"reasonable accommodation" means any necessary and appropriate adjustment, modification, aid, service or support given to facilitate a person with a mental illness in obtaining equal access to opportunities, in performing essential duties, or in enjoying the same privileges as others, provided the adjustment does not create an undue hardship.

6. Rights of a person with a mental illness

Every person diagnosed with, or exhibiting symptoms of, a mental illness has the same constitutionally protected fundamental rights and freedoms afforded to others and protected by the Constitution subject only to the exceptions and limitations set out in the Constitution.

7. Right of access to education

(1) A person with a mental illness shall have access to inclusive primary and secondary education on an equal basis with a person without a mental illness.

(2) All educational institutions shall foster a supportive learning environment in which reasonable accommodations are provided as necessary to a student with a mental illness to facilitate the effective completion of his or her education, academic development, and social inclusion within the general education system.

(3) Every primary and secondary educational institution shall maintain a designated child safe space where a child who is diagnosed with or is exhibiting symptoms of a mental illness may voluntarily seek confidential support, counselling, referral or other appropriate assistance from a mental health professional, school counsellor, social worker, nurse or other approved person.

(4) Any person who, by whatever means, has come into information about a child who has or is exhibiting symptoms of a mental illness shall treat that information as confidential and shall not disclose that information to any other person, except where the disclosure is necessary for the child's care, treatment, protection or welfare, is required to prevent a serious and imminent risk of harm, is required by law, or is ordered by a court.

8. Right of access to work

(1) A person with a mental illness shall have the right of equal access to work and participation in the workforce, including access to recruitment, employment, vocational training, promotion, work assistance programmes, safe and healthy working conditions, and protection from unfair dismissal, on an equal basis as a person without a mental illness.

(2) An employer shall provide reasonable accommodation to a person with a mental illness to enable that person to perform the essential functions of the job, unless the employer demonstrates that the accommodation would impose a disproportionate or undue burden on the employer.

(3) An employer shall not discriminate, directly or indirectly, against a person on the basis of a mental illness in any matter relating to employment, including —

(a) recruitment and selection;

(b) access to training, professional development, and promotion; and

(c) termination of employment.

(4) In addition to any other paid leave authorized by any other law, a person with a mental illness shall be entitled to up to five (5) paid days annually for personal wellness in support of their mental health, to include time at home.

9. Right to live in the community

(1) A person with a mental illness shall have the right to live in, be part of, and not be segregated from the community.

(2) A person with a mental illness shall be provided with mental health care services and treatment and community-based programmes that improve the capacity of that person to develop to full potential and to facilitate his or her integration into community life.

(3) A person with a mental illness shall have the right to participate in social life on an equal basis with others without discrimination of any kind.

(4) A person with a mental illness shall have the same right as anyone without a mental illness to have children.

(5) A parent or guardian shall not be limited in access to or denied custody of his or her child solely due to a diagnosis of a mental illness.

10. Right to access mental healthcare

(1) A person with a mental illness shall have a right to access mental health care and treatment from a mental health facility operated or funded by the Government, without discrimination of any kind.

(2) The mental health care and treatment referred to in subsection (1) shall include but is not limited to–

(a) acute mental health care services such as outpatient and inpatient care;

(b) hospital and community based mental health care and treatment;

(c) assisted-living to include supportive accommodation services for persons with a mental illness;

(d) provision of halfway homes and sheltered accommodation;

(e) mental health care services and treatment delivered in the home environment to a person with a mental illness to assist the family;

(f) child mental health care services; and

(g) old age mental health care services.

(3) The right to access mental health care services and treatment shall include a right of access –

(a) without discrimination on the basis of gender, sex, sexual orientation, religion, culture, social or political beliefs, class, or disability;

(b) to affordable mental health care services and treatment of good quality and distributed equitably to all persons with special attention given to children and vulnerable or marginalized groups and minorities;

(c) to mental health care services and treatment provided in accordance with currently accepted medical standards.

(4) The government shall bear the cost of transporting a person with a mental illness for any mental health care services and treatment.

(5) A person with a mental illness shall have access to treatment on the basis of the principle of "the least restrictive alternative".

11. Parity for persons with a mental illness

(1) A person with a mental illness shall be treated as equal to a person with a physical illness in the provision of all healthcare services including the following –

(a) living conditions in a mental health facility shall be of the same quality as provided to a person with a physical illness in a health facility;

(b) emergency facilities and emergency services provided to a person with a mental illnesses shall be of the same quality and availability as those provided to a person with a physical illness;

(c) a person with a mental illness shall be entitled to the use of emergency medical services in the same manner, extent and quality as provided to a person with a physical illness; and

(d) any other health care services provided to a person with a physical illness shall be provided in the same manner, extent and quality to a person with a mental illness.

(2) A person with a mental illness shall not be prohibited from obtaining health insurance and life insurance solely on the basis of his or her mental illness.

(3) An insurance provider shall not offer insurance services to a person with a mental illness at a cost which is significantly higher than the cost offered for the same coverage to a person without a mental illness, unless any increase in cost is reasonable based on the cost of providing such insurance or the cost of reinsurance.

12. Right to access medical records

(1) A person with a mental illness shall have the right to access, examine, or copy his or her medical records on payment of a prescribed fee.

(2) The consultant-in-charge or a mental health professional in charge of the medical records may withhold specific information in the medical records if disclosure would result in –

(a) serious mental harm to the person with a mental illness; or

(b) a likelihood of harm to other persons.

(3) When any information in the medical records is withheld from the person with a mental illness, the consultant-in-charge or the mental health professional shall inform that person of his or her right to make an application to the Tribunal for an order to release the information.

(4) A person with a mental illness has the right to have his or her medical records corrected or have irrelevant portions of his or her medical records erased.

13. Right to information

(1) Before initiating or administering any mental health care or treatment, every mental health professional shall inform the person with a mental illness and his or her nominated representative, if any, or next of kin of the rights of a person with a mental illness in a manner and language that he or she is able to understand.

(2) Where the person to receive the mental health care or treatment and his or her nominated representative, caregiver or support person, do not understand the language of the mental health professional, the services of an interpreter shall be secured, unless to do so would delay the initiation or administration of the mental health treatment to the detriment of the person.

(3) If a person has been admitted to a mental health facility and is judged by the mental health professional as lacking the capacity to make mental health care or treatment decisions in accordance with section 19, his or her nominated representative, caregiver or support person shall be given the information.

(4) Where a person receiving mental health care or treatment has sufficiently recovered to understand the nature of his or her mental health status and the care and treatment administered, that person shall from that point, be informed of the care and treatment prescribed for him or her, and his or her decisions and instructions shall be accepted for the further conduct of his or her mental health care and treatment.

14. Right to communication

(1) A person admitted to a mental health facility has the right to receive or refuse any contact or communication with anyone in the community, whether by visits, phone calls, mail or electronic media including email.

(2) Where a person admitted to a mental health facility informs the consultant-in-charge or mental health professional in charge of the mental health facility that he or she does not want to receive contact or communication from any named person in the community, the consultant-in-charge or mental health professional in charge may restrict such contact or communication.

(3) Subsection (2) shall not apply to any contact or communication to and from –

(a) any judge or officer authorized by a competent court;

(b) members of the Mental Health Services Board or the Mental Health Review Tribunal;

(c) the nominated representative, lawyer or legal representative of the person; or

(d) the consultant-in-charge or mental health professional in charge of the treatment of the person.

15. Rights in a mental health facility

If a person has been admitted to a mental health facility, he or she has a right to –

(a) participate in treatment decisions to the extent possible;
(b) be transported in the least restrictive manner;
(c) request and receive an independent examination from a mental health professional;
(d) timely reviews by a mental health professional;
(e) make an application to the Tribunal regarding his or her decision-making ability, treatment, or admission; and
(f) continuity of care, discharge planning and re-entry into the community.

16. Rights of nominated representatives, relatives and caregivers

(1) Nominated representatives, relatives and caregivers of a person with a mental illness shall have the right to—

(a) visit the person with a mental illness in the mental health facility;
(b) provide feedback to the mental health facility including complaints about any deficiency in services;
(c) support from mental health service providers to enable them to effectively perform their caregiving role; and
(d) social assistance in the same quality, manner and extent as the assistance provided to a caregiver of a person with a physical disability.

(2) Nominated representatives, relatives and caregivers may be involved in setting treatment goals, planning for treatment, discharge and care and treatment after discharge from the mental health facility.

(3) Under subsection (2), the involvement of nominated representatives, relatives and caregivers shall be –

(a) with the consent of the person with a mental illness in the case of a person admitted voluntarily under section 34; and

(b) with the consent of the person making an application under section 36(2) in the case of a person admitted by facilitated admission.

PART III

DUTIES OF PROVIDERS AND THE GOVERNMENT

17. Duties of mental health service providers

Mental health service providers shall have a responsibility to –

(a) provide the highest quality, person-centered, recovery-oriented care;

(b) provide support, care, treatment, and rehabilitation suited to the care and treatment needs of the person with a mental illness in accordance with the least restrictive alternative principle;

(c) ensure a person with a mental illness, his or her nominated representative, caregivers and support persons participate in the decisions that affect the person with the mental illness;

(d) ensure consideration of the physical wellbeing and physical health needs of a person in their care;

(e) respect the wishes of the person with a mental illness, except as provided under this Act;

(f) respect the privacy and confidentiality of a person with a mental illness, his or her nominated representative and caregivers;

(g) ensure that a person with a mental illness and their caregivers are not subject to abusive, violent or degrading treatment;

(h) prohibit discrimination throughout a mental health facility;

(i) ensure their knowledge base is up to date and reflects current accepted best practices in assessment, treatment, care planning, support, and rehabilitation;

(j) provide the highest quality, evidence-based, recovery-oriented assessment, individualised care planning, support, care, treatment, rehabilitation and recovery services to mental health consumers without stigma and discrimination;

(k) respect the dignity of persons with a mental illness and their caregivers;

(l) take into account the wishes, life experiences, spiritual and emotional experiences, skills and abilities of the person with a mental illness;

(m) take into account the economic, social, cultural and geographical factors relevant to the person with a mental illness;

(n) inform a person with a mental illness or their caregivers about services and treatment options available, and about their rights including mechanisms of complaint and redress;

(o) promote the best interests of a child when a family member, guardian or caregiver is being treated for a mental illness;

(p) ensure that care and treatment are not used as a means of punishment or for the convenience of other people;

(q) be actively involved in the planning and management of services, individualised care planning, support, care, treatment, rehabilitation and recovery;

(r) contribute to the development and regular review of standards for evaluating services including both the process of service provision and the outcome of assessment;

(s) participate in the development of professional ethical standards that accord with international human rights principles; and

(t) participate in developing government policy and service guidelines that will lead to the advancement of social, health and mental health services and which will be integrated into the National Mental Health Plan, referred to in section 6(a), while retaining their specialized focus, identity and funding.

18. Duties of the Government

The Government shall have a duty to –

(a) develop a National Mental Health Plan with a national strategic suicide prevention plan, or include such a plan in the national wellness framework or the national health plan;

(b) plan, design, fund and implement programmes that shall include–

(i) programmes to reduce suicides and attempted suicides;

(ii) community-based programmes to promote mental health and to prevent mental illness;

(iii) programmes in coordination with the education and employment sectors to prevent mental illness and promote mental health; and

(iv) programmes to reduce stigma associated with mental illness;

(c) take measures to address the human resource requirements of mental health care services by planning, developing and implementing educational and training programmes to meet international guidelines as it relates to the availability and accessibility to mental health care services;

(d) ensure that medical officers in prisons, prison officers, fire officers, police officers and all first responders are trained in basic and emergency mental health care;

(e) ensure that the delivery of mental health care services shall be of equal quality to other general health care services.

(f) ensure that there is no discrimination in the quality of services provided to a person with a mental illness.

(g) ensure effective coordination between departments dealing with physical health, mental health, law and order, social justice, employment, education, and gender affairs;

(h) set up and maintain rehabilitation services attached to community-care centres to promote integration of persons with a mental illness into society such as support for education, employment, vocational training and return-to-work programmes;

(i) establish and maintain infrastructure and facilities such as shelters for the homeless, halfway homes or affordable public housing programmes for persons with a mental illness;

(j) provide assisted-living facilities services designed to promote independent living and full involvement in the community and decrease incidence of institutionalization;

(k) establish in every primary and secondary educational institution, so far as is reasonably practicable, a designated child safe space for students who are diagnosed with or are exhibiting symptoms of a mental illness; and

(l) ensure that the provisions of this Act are given wide publicity through public media.

PART IV

CAPACITY,

SUPPORTED DECISION MAKING,

ADVANCE DIRECTIVE AND

NOMINATED REPRESENTATIVE

Capacity

19. Capacity to make mental health care and treatment decisions

(1) A person's capacity to make mental health care and treatment decisions shall be assessed on Form 1 of the Schedule by a mental health professional.

(2) Every person, including a person with a mental illness, is deemed to have the capacity to make decisions regarding his or her mental health care or treatment unless the person is unable to—

(a) understand the information that is relevant to make a decision on his or her treatment, admission or personal assistance;

(b) appreciate any reasonably foreseeable consequence of a decision or lack of a decision regarding his or her treatment, admission or personal assistance; or

(c) communicate the decision under paragraph (b) by means of speech, gesture or in any other manner.

(2) The information referred to in subsection (1)(a) shall be communicated to a person with a mental illness using simple language which the person understands or by sign language, visual aids, or any other means to enable the person to understand the information.

(3) Where a person makes a decision regarding his or her mental health care or treatment which is perceived by others as inappropriate or wrong, it shall not automatically follow that the person does not have the capacity to make a mental health care or treatment decision, so long as the person has the capacity to make the mental health care or treatment decision under subsection (1).

(4) When assessing the decision-making ability of a person, reasonable steps should be taken to conduct the assessment at a time when, and in an environment in which, the ability of the person can be assessed most accurately.

(5) It should not be assumed that a person does not have the ability to make a decision based on –
(a) his or her age, except in the case of a child;
(b) his or her appearance;
(c) his or her condition; or
(d) an aspect of his or her behaviour.

(6) A mental health diagnosis alone is not sufficient to assume that a person does not have decision-making ability in relation to his or her mental health or physical health.

(7) The decision-making ability of a person with a mental illness can change over time and must be evaluated at frequent intervals of no longer than 14 days.

(8) The decision-making ability of a person with a mental illness is to be evaluated by a mental health professional.

(9) If a person believes that he or she has decision-making ability beyond what is determined by the mental health professional, he or she may appeal to the Tribunal.

Advanced Directive

20. Advance directive

(1) Every person, who is not a child, shall have a right to make an advance directive in writing specifying any or all of the following —

(a) the manner in which the person wishes to be cared for or treated for in relation to a future mental illness;
(b) the manner in which the person does not wish to be cared for or treated for in relation to a future mental illness; or

(c) the individual or individuals, in order of priority, the person wants to appoint as his or her nominated representative.

(2) A person making an advance directive shall, until it is proved otherwise, be presumed to have the capacity to do so.

(3) An advance directive under subsection (1) may be made by a person irrespective of his or her history of mental illness or treatment for mental illness.

(4) An advance directive made under subsection (1) shall –

(a) be in writing;

(b) signed and dated by the person making the advance directive;

(c) witnessed by another person;

(d) include a statement signed by the witness that he was present and observed the person making the advance directive and signed it on the date indicated; and

(e) be registered with the Mental Health Services Board;

(5) An advance directive –

(a) shall become effective when the person who made the advance directive ceases to have capacity to make decisions regarding his or her mental health care and treatment;

(b) shall, remain effective until the person who made the advance directive regains the capacity to make decisions regarding his or her mental health care and treatment;

(c) may be revoked or cancelled at any time by any means capable of signifying a cancellation or revocation of a previous advance directive including and maybe replaced by an entirely new advance directive.

(6) An advance directive made contrary to any written law of Antigua and Barbuda shall be void.

21. Maintenance of online register

(1) The Mental Health Services Board established under section 70 shall register and maintain a registry of advance directive given under section 20.

(2) The registry shall be available online to mental health professionals in charge of the treatment and care of a person with a mental illness.

22. Advanced directive not to apply to emergency treatment

An advance directive under section 20 shall not apply to any emergency treatment given under section 42.

23. Reviewing, altering, modifying or revoking the advance directive

(1) Where a mental health professional, a relative, or a caregiver of a person with a mental illness desires not to follow an advance directive while the person is being treated, the mental health professional, relative or caregiver of the person shall make an application to the Tribunal to review, modify or revoke the advance directive.

(2) Upon receipt of an application under subsection (1) and after giving all parties concerned an opportunity to be heard, including the person whose advance directive is in question, the Tribunal shall either uphold, modify or revoke the advance directive.

(3) The Tribunal shall give consideration to the following issues in determining the application —

(a) whether the advance directive was made by the person of his or her own free will without force, coercion or undue influence;

(b) whether the person intended the advance directive to apply in the circumstances prompting the application;

(c) whether the person was sufficiently well informed to make the advance directive;

(d) whether the person had capacity to make decisions relating to his or her mental health care or treatment when the advance directive was made; and

(e) whether the content of the advance directive contravenes any written law or any provision of the Constitution.

24. Advanced directive for children

(1) A parent or legal guardian of a child with a mental illness shall have the right to make an advance directive in writing in respect of the child.

(2) All the provisions relating to the advance directive for the child, shall apply to the child, with such modifications as are necessary, until he or she attains the age of eighteen.

25. Mental health professional not liable in relation to advance directive

A medical practitioner or a mental health professional shall not be held liable for any unforeseen consequences of –

(a) following a valid advance directive; or

(b) not following a valid advance directive if the advance directive is not immediately available to the medical practitioner or mental health professional who has to make an urgent decision regarding the mental health care and treatment of the person.

Nominated Representatives

26. Appointment of nominated representative

(1) A person who is not a child shall have a right to appoint a nominated representative.

(2) A person may appoint an individual or individuals, in order of priority, as his or her nominated representative in his or her advance directive.

(3) A nominated representative shall be appointed –

(a) in writing;

(b) with the signature or thumb impression or mark of the person with a mental illness; and

(c) with two (2) persons present as witnesses.

(4) The person appointed as the nominated representative shall –

(a) be 18 years or over;

(b) be competent to discharge the duties or perform the functions assigned to him or her under this Act; and

(c) give his or her consent in writing to the mental health professional to discharge his or her duties and perform the functions assigned to him or her under this Act.

(5) Where a person with a mental illness has not appointed a nominated representative, the following persons for the purposes of this Act, in order of priority, may be deemed to be that person's nominated representative—

(a) a person appointed as an attorney by an enduring power of attorney which includes the authority to make mental health care and treatment decisions on behalf of the grantor;

(b) parent, if the person with the mental illness is not married;

(c) a spouse;

(d) a relative;

(b) a caregiver;

(c) a suitable person appointed as such by the Tribunal; or

(d) the Director responsible for social services.

27. Duties of a nominated representative

A nominated representative shall—

(a) consider the best interests of the person with a mental illness, as well as, the current and past wishes, the life history, values, cultural background;

(b) give particular assistance in the interpretation and comprehension of treatment and care decisions to the person with a mental illness to the extent that the person understands the nature of the decisions under consideration;

(c) provide support to the person with a mental illness in making treatment decisions;

(d) have the right to seek information on diagnosis and treatment to provide adequate support to the person with a mental illness;

(e) be involved in setting treatment goals, planning treatment, discharge care and treatment after discharge from a mental health facility;

(f) visit the person in a mental health facility;

(g) give or withhold consent for research with respect to the person with a mental illness;

(h) apply to the mental health facility for facilitated admission under sections 36 and 39;

(i) apply to the Tribunal on behalf of the person with a mental illness for discharge from a mental health facility under section 37(5); and

(j) apply to the Tribunal against violation of rights of the person with a mental illness in a mental health facility.

28. Temporary nominated representative in emergency circumstances

The Director responsible for social services or his or her representative shall temporarily be engaged by a mental health professional to discharge the duties of a nominated representative pending appointment of a nominated representative by the Tribunal.

29. Alteration or revocation of a nominated representative

(1) A person who has appointed a nominated representative under the provisions of this Part may revoke or alter such appointment at any time.

(2) The Tribunal may revoke an appointment made by the person with a mental illness and appoint a different representative under this section if the Tribunal is of the opinion that doing so is in the interest of the person with a mental illness.

(3) A person shall not be deemed to lack the capacity to make decisions about his or her mental health care and treatment where the Tribunal revokes an appointment made by the person with a mental illness and appoints a different representative under subsection (2).

30. Nominated representative for a child

(1) A nominated representative for a child with a mental illness shall be –
  (a) the parent; or
  (b) the legal guardian of the child.

(2) Where a person under subsection (1) is absent, the following persons may be the nominated representative of the child in order of priority –
  (a) the person appointed as the Public Trustee, if he or she consents;
  (b) the Director responsible for social services, if her or she consents;
  (c) the person appointed as the Solicitor General, if he or she consents; or
  (d) a person from a non-profit organization with a focus or an interest in persons or children with mental illness.

31. Nominated representative for a child appointed by court order

(1) In the absence of any parents or legal guardian, the court may, on application, appoint a nominated representative of a child.

(2) An application for an order under subsection (1) may be made by the following persons in order of priority –
  (a) a relative;
  (b) a caregiver; or
  (c) a suitable person specified under subsection (4) who wishes to be a nominated representative.

(3) An application for an order under subsection (1) shall be supported by the affidavit evidence of the applicant and of a mental health professional responsible for care and treatment of the child.

(4) A nominated representative for a child with a mental illness appointed by an order of the court shall be a person who –

(a) can fairly and competently coordinate care and treatment with a mental health service provider on behalf of the child with a mental illness; and

(b) has no interest adverse to that of the child with a mental illness.

32. Power of the court to prevent, vary or terminate a nominated representative of a child

(1) On an application being made by a person under section 31(1), the court may–

(a) direct that a person may not act as a nominated representative for a child with a mental illness;

(b) terminate the authority of a nominated representative to act for a child with a mental illness; or

(c) appoint a new nominated representative in substitution for an existing one.

(2) An application for an order under subsection (1) shall be supported by affidavit evidence by the applicant and a mental health professional responsible for care and treatment of the person.

(3) An application to appoint a new nominated representative for a child in substitution for an existing one shall be made on notice to the existing nominated representative or caregiver of the child.

PART V

CARE AND TREATMENT OF

PERSONS WITH A MENTAL ILLNESS

33. Admission of a person with a mental illness

(1) The procedure for admission to a mental health facility shall be consistent with admission to a hospital for treating a physical illness.

(2) A person with a mental illness shall be treated, as far as possible, at his or her home or near to his or her home without requiring care and treatment in a mental health facility.

(3) Where a person with a mental illness requires treatment in a mental health facility, it shall be provided on a basis of voluntary admission under section 34, except in the circumstances stated in section 36 where the person may be cared for and treated on facilitated admission.

(4) Where a person lacks capacity to make decisions for his or her mental health care, he or she may be provided care and treatment at a mental health facility only as a facilitated admission under section 36.

34. Voluntary Admission

(1) All admissions in the mental health facility shall, as far as possible, be voluntary admissions except where conditions for a facilitated admission exist under section 36.

(2) A person, who is not a child and who considers himself or herself to have a mental illness and desires to be admitted in any mental health facility for care and treatment may make an application completed on Form 2 of the Schedule to the consultant-in-charge for admission.

(3) Where an application is received under subsection (2), the consultant-in-charge shall, as soon as practicable, have the mental status of the applicant assessed by a mental health professional.

(4) Where the mental health professional conducting the assessment referred to in subsection (3) above, finds that the mental illness of the person is of a nature that requires the person to be provided with care and treatment in a mental health facility, the consultant-in-charge shall immediately admit the person for mental health care and treatment.

(5) The consultant-in-charge shall authorize the admission of the person to the mental health facility if the consultant-in-charge is satisfied based on the report of the mental health professional that—

(a) the person has a mental illness of a severity requiring admission to a mental health facility;

(b) the person is likely to benefit from admission and treatment to the mental health facility;

(c) the person has the capacity to make mental health care and treatment decisions without support or he or she requires minimal support from others in making such decisions;

(d) the person has understood the nature and purpose of admission to and treatment in the mental health facility; and

(e) the person has made the application for admission of his or her own free will, without any duress or undue influence.

(6) If a person with a mental illness is –

(a) unable to understand the purpose, nature or likely effects of the proposed treatment or of the probable result of not accepting the treatment; or

(b) requires a very high level of support in making decisions regarding care and treatment,

he or she shall be deemed unable to understand the purpose of the admission and therefore shall not be admitted under this section.

(7) A person who is voluntarily admitted under this section shall not be treated without his or her informed consent.

(8) A person voluntarily admitted under this section has a right to discharge himself or herself from the mental health facility.

(9) If the consultant-in-charge of a mental health facility or his or her designated representative is of the opinion that the person meets the criteria for a facilitated admission under section 36, the consultant-in-charge may prevent self-discharge for a period not exceeding twenty-four (24) hours to allow for examination as required under section 36(3)(a).

35. Discharge reports

The consultant-in-charge of a mental health facility shall issue a discharge report on Form 4 of the Schedule to the person with a mental illness who was admitted for the purpose of receiving care, treatment and rehabilitation services.

36. Facilitated Admission

(1) In cases where a person with a mental illness lacks capacity to make mental health care decisions, that person may be admitted to a mental health facility on a facilitated admission.

(2) An application for a facilitated admission shall be made by a nominated representative on Form 3 of the Schedule.

(3) The consultant-in-charge of the mental health facility shall admit the person with a mental illness on an application under subsection (2) where—

(a) the person has been independently examined on the day of admission or in the preceding seven (7) days, by two professionals who shall be –

(i) a psychiatrist or medical practitioner with training in mental health; and

(ii) a mental health professional;

(b) on examination and, where appropriate, on information provided by other persons, both professionals independently conclude that the person has a mental illness of such severity that the person –

(i) has recently threatened, attempted or is attempting to cause bodily harm to himself or herself;

(ii) has recently behaved or is behaving violently toward another person;

(iii) has caused or is causing another person to fear bodily harm from him or her; or

(iv) has recently shown or is showing an inability to care for himself or herself to a degree that places the person at risk of harm to himself or herself;

(e) after considering the advance directive, if any, both professionals certify that admission to the mental health facility is the least restrictive care option possible; and

(f) the person is not eligible to receive care and treatment as a voluntarily admitted person under section 34.

(4) Neither of the two (2) professionals under subsection (3), shall be related to the person who is being assessed for facilitated admission by –

(a) blood as a relative in the first degree;

(b) marriage; or

(c) a common law relationship.

37. Treatment on Facilitated Admission and further steps

(1) Any person admitted under section 36 shall receive treatment as prescribed by a mental health professional with the consent of the nominated representative or in accordance with an advance directive, if any.

(2) A facilitated admission of a person to a mental health facility under section 36 shall be limited to a period of up to fourteen (14) days.

(3) Where, on the expiry of the fourteen (14) days referred to in subsection (1), the consultant-in-charge, concludes that the person admitted under section 36 no longer meets the criteria for facilitated admission, he or she may discharge the person pursuant to section 35.

(4) The person being discharged under subsection (3) may make an application for voluntary admission under section 34 on Form 2 of the Schedule.

(5) A person admitted to a mental health facility under section 36 or his or her nominated representative may make an appeal to the Tribunal to be discharged from a mental health facility.

38. Extension of facilitated admission

(1) If, on the expiry of the fourteen (14) days specified in section 37(2), the consultant-in-charge is of the opinion that the criteria for facilitated admission is still present, the consultant-in-charge shall apply to the Tribunal for the extension of the facilitated admission of the person in the mental health facility.

(2) Where an application under subsection (1) is made, the Tribunal shall –

(a) hold a hearing;

(b) ensure that both the person with a mental illness and his or her nominated representative attend the hearing and be allowed to make representations regarding his or her care and treatment;

(c) hear evidence from the consultant-in-charge and other mental health professionals, if necessary; and

(d) make an order either to discharge the person or extend the facilitated admission.

(3) The order of the Tribunal for extension of the facilitated admission shall be for a period of up to ninety (90) days for the first application and any subsequent applications made, may be ordered up to one hundred and twenty (120) days at a time.

(4) The consultant-in-charge shall discharge the person, if he or she is of the opinion that during the extended period, the person with mental illness no longer meets the criteria for facilitated admission and inform the Tribunal of the same.

39. Facilitated admission of a child

(1) Facilitated admission of a child with a mental illness shall be made on application of the nominated representative of the child on Form 3 of the Schedule.

(2) The procedure for facilitated admission under section 36 shall apply with such modifications as are necessary for the facilitated admission of a child with a mental illness.

(3) A child admitted to the mental health facility shall be accommodated separately from adults.

(4) The parent or legal guardian may stay with the child in the mental health facility for the period of the child's treatment in the mental health facility.

(5) An application on Form 5 of the Schedule may be made to the Tribunal by the consultant-in-charge to restrict access to the parent or legal guardian of the admitted child if it is considered that restricting access is in the best interests of the child.

(6) On the hearing of an application under subsection (5), the Tribunal –

(a) shall appoint a nominated representative; and

(b) may restrict access of the parent or legal guardian; or

(c) allow access on conditions which are in the best interest of the child.

(7) A child shall be treated only with the consent of the nominated representative of the child.

40. A person with a mental illness at home

(1) Where a person with a mental illness is not willing to go to a mental health facility for care and treatment, a nominated representative may make a request to the nearest mental health facility for an assessment at home of the person with the mental illness.

(2) Where a request is received under subsection (1), the relevant authority from the mental health facility shall arrange for a mental health professional to visit the person with a mental illness and make an assessment.

(3) On assessment, if the mental health professional is of the opinion that the person has a mental illness and is neglecting himself or herself to an extent which puts his or her own life or the life and safety of others at risk, the mental health professional may request a police officer for assistance in moving the person to the nearest mental health facility.

(4) A police officer to whom a request is made under subsection (3), shall give all the necessary assistance to the mental health professional for moving the person to the nearest mental health facility.

41. A person with a mental illness wandering streets

(1) A police officer shall have a person conveyed by emergency medical services to the nearest mental health facility where the police officer observes –

(a) a person who is suspected of having a mental illness wandering a public space; and

(b) that the person is behaving in such a way which may put his or her own life or safety or the life and safety of others at risk.

(2) A police officer shall have the person conveyed by the emergency medical services to the nearest mental health facility where the police officer is informed by a member of the public that –

(a) a person in a public space is suspected of having a mental illness; and

(b) the person is behaving in such a way which may put his or her own life or the safety or the life and safety of others at risk.

(3) If after examination by a mental health professional, the person is deemed not to have a mental illness or is not in need of admission for their mental illness, it shall be the responsibility of the police officer to take the person to a shelter for homeless people and also find their family or relatives to make contact with them.

42. Emergency treatment

(1) A person who is diagnosed with or is exhibiting symptoms of a mental illness may be provided with emergency treatment for a physical or mental illness by a medical practitioner in a health facility, mental health facility or in the community.

(2) Emergency treatment shall only be done without the consent of the person with the mental illness if the emergency treatment is immediately necessary to prevent —

(a) death or irreversible harm to the health of the person with the mental illness; or

(b) the person from inflicting serious harm to self or others.

(2) Emergency treatment includes transportation of the person with the mental illness to the nearest mental health facility for assessment.

(3) Any emergency treatment provided shall be limited to a period of up to seventy-two (72) hours.

(4) If the emergency treatment takes place in a mental health facility, after the period of seventy-two (72) hours, the admission shall be converted to a voluntary admission or a facilitated admission as the case may be.

43. Seclusion and restraint

(1) A person who is diagnosed with or is exhibiting symptoms of a mental illness shall not be subjected to seclusion.

(2) A person who is diagnosed with or is exhibiting symptoms of a mental illness shall not be subjected to physical restraint unless –

(a) there is informed consent by the person is exhibiting symptoms of a mental illness or the nominated representative of that person;

(b) it is used in line with standard clinical procedures; and

(c) it is the only means available to prevent immediate or imminent harm to the person concerned or to others.

(3) In all circumstances, the nominated representative of the person shall be immediately informed when the person is physically restrained.

(4) Any physical restraint applied to a person who has a mental illness –

(a) shall be done in a mental health facility or a health facility;

(b) shall be authorised by the consultant-in-charge or the medical practitioner in charge of treatment of the person;

(c) shall not be used as a means of punishment or for the convenience of others; and

(d) shall have recorded the reasons and duration of every use of restraint in a database made available to the Board on a regular basis.

(5) Any physical restraint used in each instance shall be restricted to a maximum of two (2) hours and shall –

(a) not be renewed without an inspection of the area of restriction and assessment of the health and safety of the person and documentation of the results of the inspection and assessment;

(b) not exceed an aggregate of twelve (12) hours within a twenty-four (24) hour period, unless an application is made to the Board within that twenty-four (24) hour period for the physical restraint to be for a longer period.

(6) A person subjected to physical restraint shall at all times be in the direct vision of a mental health professional.

(7) All medical practitioners, mental health professionals and all staff working within a mental health facility or health facility, including a community clinic, and all police officers should receive training in and utilise alternatives to physical restraint, such as alternative use of force mechanisms by medical staff or police officers.

44. Leave to persons admitted as facilitated admission

(1) The consultant-in-charge of the mental health facility may grant leave to a person admitted as a facilitated admission in a mental health facility for a period not exceeding seven (7) days at a time.

(2) The consultant-in-charge of the mental health facility may, at any time revoke the leave if he or she is satisfied that it is necessary for the improvement of, or to prevent deterioration of the mental health of the person.

(3) Where a person with a mental illness who has been granted leave under subsection (1) refuses to come back to the mental health facility on revocation of the leave or on the expiry of the leave, the consultant-in-charge may follow the procedures specified in section 45 for his or her return to the mental health facility.

45. Absence without leave of persons admitted as facilitated admission

(1) Where a person with mental illness admitted as a facilitated admission is missing from the mental health facility without being granted leave, the consultant-in-charge of the mental health facility shall inform the police and inform the person who had made the application for facilitated admission.

(2) Where a person granted leave under section 44 refuses to return to the mental health facility on revocation of the leave or on the expiry of the leave, the consultant-in-charge of the mental health facility may follow the procedures specified under subsection (1) for his or her return to the mental health facility.

(3) The police shall have the responsibility to convey the person back to the mental health facility.

46. Electro-convulsive therapy or psycho-surgery

(1) A special treatment such as electro-convulsive therapy or psycho-surgery shall only be —

(a) provided and applied in accordance with the authorisation, supervision and with the written instructions of a psychiatrist; and

(b) provided with the consent of the person concerned or if he or she lacks capacity to consent, with the consent of his or her nominated representative.

(2) In the case of a child, special treatment is prohibited.

47. Clinical or experimental research or development of drugs

Any clinical or experimental research or development of drugs to be administered as part of special treatment, shall be conducted in accordance with the law.

PART VI

PERSONS SUBJECT TO CRIMINAL PROCEEDINGS WITH A MENTAL ILLNESS

48. Designation of a mental health facility for a person subject to criminal proceedings

(1) The Minister may, in consultation with the Minister responsible for correctional In consultation with the Minister responsible for correctional services, a mental health facility shall be designated which may admit and provide care and treatment to a person subject to criminal proceedings who is diagnosed with or is exhibiting symptoms of a mental illness.

(2) The mental health facility may be within a prison or a secure unit in a mental health facility.

49. Persons detained with a mental illness

(1) Where a person is detained but not yet charged with a criminal offence within forty-eight (48) hours of his or her arrest, an officer in charge shall have the mental health status of the person assessed and screened by a mental health professional if the officer observes or receives information that the person detained who is diagnosed with or is exhibiting symptoms of a mental illness.

(2) A person described under subsection (1) who has not yet been charged with a criminal offence shall not have his or her detention in the holding cell be extended beyond forty-eight (48) hours solely on the basis that the person is diagnosed with or is exhibiting symptoms of a mental illness.

50. Mental health report of person detained to Magistrate

(1) The mental health screening under section 49 shall assess—
(a) the mental state and capacity of the person;
(b) any immediate risk of harm to the person or to others; and
(c) the need for mental health intervention, treatment, or referral.

(2) Following a mental health screening referred to under subsection (1), the mental health professional shall prepare a written and detailed mental health report.

(3) The officer in charge shall receive written confirmation on whether the person submitted for mental health screening has a mental illness, but the officer in charge shall not receive the contents or details of the report.

(4) The detailed mental health report shall be transmitted by the mental health professional within twenty-four (24) hours after completion of the screening to a Magistrate.

(5) The report shall include—

(a) an assessment of the mental health status of the person;

(b) where the person has a mental illness, a plan for the care and treatment of that person as an outpatient or as an inpatient within a mental health facility;

(c) the person's fitness to be in custody;

(d) any recommended treatment, care, supervision, or referral; and

(e) any immediate risks to the person with mental illness or to others.

(6) The full and detailed report of the mental health screening shall be communicated to the person with a mental illness and his or her nominated representative or caregiver in a manner or language that can be understood.

(7) The Magistrate may, upon receipt of the report, make an order as is necessary, including—

(a) an order that the person be admitted to a mental health facility for facilitated admission under this Act as recommended within the mental health report;

(b) an order to release the person into the care of a responsible person, unconditionally or subject to conditions as recommended under the mental health report; or

(c) any other lawful order consistent with the provisions of this Act.

(8) The order of the Magistrate under subsection (7) shall be served on the person with a mental illness and his or her nominated representative or caregiver.

(9) Information relating to the mental health status of the person shall be treated as confidential and shall be used only for the purposes of criminal proceedings and the provision of appropriate care and treatment for the person with mental illness.

51. Persons on remand with a mental illness

Where an officer in charge having custody of a person on remand observes or receives information that the person in custody who is diagnosed with or is exhibiting symptoms of a mental illness, within forty-eight (48) hours, the officer in charge shall promptly have the mental health status of the person on remand screened by a mental health professional.

52. Mental health report of persons on remand to the Magistrate

(1) The mental health screening under section 51 shall assess—

(a) the mental state and capacity of the person;

(b) any immediate risk of harm to the person or to others; and

(c) the need for mental health intervention, treatment, or referral.

(2) Following a mental health screening referred to under subsection (1), the mental health professional shall prepare a written and detailed mental health report.

(3) The officer in charge shall receive written confirmation on whether the person submitted for mental health screening has a mental illness, but the officer in charge shall not receive the contents or details of the report.

(4) The detailed mental health report shall be transmitted by the mental health professional within twenty-four (24) hours after completion of the screening to the Magistrate.

(5) The report shall include—

(a) an assessment of the mental health status of the person;

(b) where the person has a mental illness, a plan for the care and treatment of that person as an outpatient within the community, subject to bail conditions, or within the custody of the prison or as an inpatient within a mental health facility;

(c) the fitness of the person to be within prison custody or to participate in criminal proceedings;

(d) any recommended treatment, care, supervision, or referral; and

(e) any immediate risks to the person with mental illness or to others.

(6) The full and detailed report of the mental health screening shall be communicated to the person with a mental illness and his or her nominated representative or caregiver in a manner or language that can be understood.

(7) The Magistrate may, upon receipt of the report, make an order as is necessary, including—

(a) an order that the person be admitted to a mental health facility for facilitated admission under this Act as recommended within the mental health report;

(b) an order to release the person into the care of the nominated representative, subject to conditions of bail or as otherwise recommended under the mental health report;

(c) an order to return the person to custody while awaiting trial, and to receive the necessary treatment and care as recommended under the mental health report; or

(d) any other lawful order consistent with the provisions of this Act.

(8) The order of the Magistrate under subsection (7) shall be served on the person with a mental illness and his or her nominated representative or caregiver and his or her legal representative, if any.

(9) Information relating to the mental health status of a person on remand shall be treated as confidential and used only for the purposes of criminal proceedings and the provision of appropriate care and treatment for the person with mental illness.

53. Care and Treatment of persons on remand with a mental illness

(1) The Superintendent of Corrections and the officer in charge of the person shall allow and make provisions for a mental health professional to carry out the necessary outpatient care and treatment for the person on remand in custody within the prison.

(2) Persons on remand admitted to a mental health facility by an order of the Magistrate shall be provided the same care and treatment as any other person under this Act.

(3) The consultant-in-charge of the mental health facility shall have the person examined within ten (10) days of the order and provide a report to the Magistrate issuing the order.

(4) Where the consultant-in-charge of the mental health facility has established that the person on remand no longer requires care and treatment in the mental health facility or that the required care and treatment can be given in the prison as an outpatient, the consultant-in-charge of the mental health facility shall prepare and submit a discharge report to the Magistrate.

(5) Upon receiving the discharge report under subsection (4), the Magistrate shall make an order that the person on remand shall be–

(a) discharged back into custody in the prison facility to the Superintendent or the officer in charge; or

(b) discharged subject to conditions of bail or as otherwise recommended under the discharge report.

54. Convicted prisoners with a mental illness

Where an officer in charge having custody of a prisoner convicted and serving a custodial sentence observes or receives information that the person in custody who is diagnosed with or is exhibiting symptoms of a mental illness, the officer in charge shall promptly, within forty-eight (48) hours, have the mental health status of the convicted prisoner screened by a mental health professional.

55. Mental health report of convicted persons to the Magistrate

(1) The mental health screening under section 54 shall assess—

(a) the mental state and capacity of the person;

(b) any immediate risk of harm to the person or to others; and

(c) the need for mental health intervention, treatment, or referral.

(2) Following a mental health screening referred to under subsection (1), the mental health professional shall prepare a written and detailed mental health report.

(3) The officer in charge shall receive written confirmation on whether the person submitted for mental health screening has a mental illness, but the officer in charge shall not receive the contents or details of the report.

(4) The detailed mental health report shall be transmitted by the mental health professional within twenty-four (24) hours after completion of the screening to the Magistrate.

(5) The report shall include—

(a) an assessment of the mental health status of the person;

(b) where the person has a mental illness, a plan for the care and treatment of that person as an outpatient within the custody of the prison or as an inpatient within a mental health facility;

(c) the person's fitness to be in custody;

(d) any recommended treatment, care, supervision, or referral; and

(e) any immediate risks to the person with mental illness or to others.

(6) The full and detailed report of the mental health screening shall be communicated to the person with a mental illness and his or her nominated representative or caregiver in a manner or language that can be understood.

(7) The Magistrate may, upon receipt of the report, make such order as is necessary, including—

(a) an order that the person be admitted to a mental health facility for facilitated admission under this Act as recommended within the mental health report;

(b) an order to return the person back into custody to serve the remainder of his or her custodial sentence and to receive the necessary treatment and care as recommended under the mental health report; or

(c) any other lawful order consistent with the provisions of this Act.

(8) The order of the Magistrate under subsection (7) shall be served on the person with a mental illness and his or her nominated representative or caregiver, and legal representative, if any.

(9) Information relating to the mental health status of a convicted prisoner shall be treated as confidential and used only for the purposes of criminal proceedings and the provision of appropriate care and treatment for the person with mental illness.

56. Care and Treatment of convicted prisoners with a mental illness

(1) The Superintendent of Corrections and the officer in charge of the convicted prisoner shall allow and make provisions for a mental health professional to carry out the necessary outpatient care and treatment for the prisoner in custody within the prison.

(2) Convicted prisoners admitted to a mental health facility by an order of the Magistrate shall be provided the same care and treatment as any other person under this Act.

(3) Where a prisoner is admitted by order of the Magistrate to a mental health facility it shall be the responsibility of the officer in charge of the prisoner to always secure the custody of the prisoner with a mental illness while they are in the mental health facility.

(4) The consultant-in-charge of the mental health facility where a prisoner serving a custodial sentence is admitted by order of the Magistrate shall have the person examined within ten (10) days of the order and provide a report to the Magistrate.

(5) Where the consultant-in-charge of the mental health facility has established that the convicted prisoner no longer requires care and treatment in the mental health facility or that the required care and treatment can be given in the prison as an outpatient, the consultant-in-charge of the mental health facility shall prepare and submit a discharge report to the Magistrate.

(6) On receipt of the discharge report under subsection (5), the Magistrate shall order the convicted prisoner to be returned into custody to continue to serve his or her custodial sentence or to be discharged and released if the custodial sentence of the prisoner has been served.

(7) Where a prisoner serving a custodial sentence is admitted to a mental health facility, the time spent in the mental health facility shall be treated as part of their custodial sentence.

57. Periodic reports on prisoners with a mental illness

(1) The consultant-in-charge of a mental health facility where persons who are serving a custodial sentence are admitted, shall ensure that a report prepared by a mental health professional on the mental health status of the person is submitted periodically, but no less than every three (3) months to the Magistrate within the nearest district.

(2) The report shall include a plan for further mental health care or the discharge of the person from a designated mental health facility.

58. Transfer of a person with a mental illness who are subject to criminal proceedings

(1) The consultant-in-charge of a mental health facility shall transfer an admitted person on remand or a convicted prisoner to another designated health facility or mental health facility if –
  (a) it would be for the benefit of the person admitted; or
  (b) that it is necessary for the purpose of obtaining special treatment for the person.

(2) The consultant-in-charge of a mental health facility shall only transfer an admitted detained person, a person on remand or a convicted prisoner to another mental health facility after obtaining–
  (a) consent from the designated health facility where the person is being transferred to; and
  (b) the approval of the order of the Magistrate admitting the person to the mental health facility.

59. Person with a mental illness subject to criminal proceedings who absconds

Where a person with a mental illness who is subject to criminal proceedings –
  (a) absconds from a mental health facility; or
  (b) is considered by the consultant-in-charge to have absconded,

the consultant-in-charge of that designated mental health facility shall immediately notify the police in writing including by emails, WhatsApp or text messages to have that person returned to custody.

PART VII

MENTAL HEALTH REVIEW TRIBUNAL

60. Establishment of the Mental Health Review Tribunal

There is hereby established a Mental Health Review Tribunal which shall consist of five (5) members appointed by the Minister.

61. Membership of the Tribunal

(1) The Tribunal shall consist of –
  (a) a retired judge who shall be the Chairperson of the Tribunal;
  (b) two (2) persons who are registered mental health professionals with training and experience in mental health care and treatment for at least seven years (7), one of whom shall be a psychiatrist;
  (c) a welfare officer; and
  (d) a member of a non-governmental organization with a focus or an interest in mental health.

(2) The Minister shall appoint members of the Tribunal on such terms and conditions and may grant such allowances and remuneration as may be prescribed.

(3) Every member shall hold office for a term of three (3) years but shall be eligible for reappointment for one (1) further term.

(4) Notwithstanding subsection (3), in the event of a vacancy occurring in the membership of the Tribunal, the Minister may appoint a person to fill the vacancy in accordance with subsection (1) and the person appointed shall hold office for the unexpired period of the original member's term.

(5) A member of the Tribunal shall not take part in any hearing in relation to a matter in which the member has a direct interest.

(6) A member of the Tribunal or any other person acting under the direction of the Tribunal shall not be under any civil or criminal liability in respect of anything done or purported to be done in good faith in pursuance of the member's duty as a member of the Tribunal.

(7) The appointment of the Chairperson and members of the Tribunal shall be published by notice in the Gazette.

62. Powers and functions of the Tribunal

(1) The Tribunal shall have the power to —

(a) give orders or instructions as to care and treatment of a person with a mental illness;

(b) revoke any orders or instructions as to care and treatment;

(c) hear complaints regarding the violation of rights of persons with a mental illness in mental health care facilities under Part III;

(d) review cases of the facilitated admission of persons under the Act and direct the discharge of such persons for whom the criteria for discharge have been satisfied;

(e) hear appeals against facilitated admission;

(f) hear appeals on renewal or extension of facilitated admission;

(g) hear applications for electro-convulsive treatment, psycho-surgery and other special treatments;

(h) hear applications for approval for the imposition of seclusion and restraint;

(i) summon any person to appear before it;

(j) examine on oath, affirmation or otherwise a witness or any person appearing before it;

(k) require any person to produce any document which the Tribunal considers relevant;

(l) issue interim orders pending determination of any matter before it; and

(m) determine any matter before it.

(2) A person summoned to attend or appear before the Tribunal as a witness has the same protection and, in addition to the penalties provided by this Act, subject to the same liabilities as a witness in proceedings in the High court.

63. Secretary to the Tribunal

(1) The Tribunal shall be provided with sufficient resources and funding by the Ministry of Health to allow it to effectively carry out its functions under this Act.

(2) The Minister shall appoint a Secretary to the Tribunal who is not a member of the Tribunal and who shall be responsible for —

(a) administration and clerical affairs of the Tribunal;

(b) convening the sittings of the Tribunal after consultation with the Chairperson and members, including through the Tribunal Portal;

(c) issuing, transmitting and recording summons, notices, directions, hearing dates, orders and decisions on behalf of the Tribunal, through the Tribunal Portal or by other electronic means;

(d) implementing decisions made by the Tribunal;

(e) taking appropriate steps to enable the Tribunal to enforce its orders;

(f) ensuring that orders or directions given by the Tribunal are complied with; and

(g) preparing an annual budget for approval by the Minister;

(h) administering the Tribunal Portal and ensuring that each matter before the Tribunal is opened, maintained, updated and closed on the Tribunal Portal;

(i) ensuring, so far as practicable, that applicants, persons with a mental illness, nominated representatives, parents or guardians, attorneys-at-law, mental health facilities, mental health professionals and any other party entitled to participate in a matter are given secure access to the Tribunal Portal or, where portal access is not reasonably available, are provided with an alternative means of filing, receiving notice and participating in the proceedings;

(j) monitoring automated notifications, hearing listings, compliance dates and reminders generated by the Tribunal Portal; and

(k) maintaining a complete electronic record of all applications, documents filed, notices issued, proof of service, hearing dates, adjournments, orders, decisions and reasons of the Tribunal.

(3) The Tribunal may, with the approval of the Minister, appoint administrative and clerical staff as are necessary to support the proper performance of the functions of the Secretary.

(4) Staff of the Secretariat shall be public officers or may be engaged on contract in accordance with applicable public service regulations.

(5) The Board may engage consultants or experts where specialised technical knowledge is required to assist the Tribunal in achieving its functions.

64. Tribunal Portal

(1) The Minister shall establish, approve or cause to be maintained a secure online litigation portal to be known as the Tribunal Portal for the management of matters before the Tribunal.

(2) The Tribunal Portal may be used for—

(a) filing applications, responses, medical reports, affidavits, written submissions and other documents;

(b) acknowledging receipt of applications and documents;

(c) assigning a matter number to each application;

(d) creating and maintaining the electronic case file for each matter;

(e) issuing, transmitting and recording notices, summonses, directions, orders, decisions and reasons;

(f) scheduling, listing, adjourning and re-listing hearings;

(g) generating automated hearing notices, reminders, compliance alerts and other case-management notifications;

(h) enabling parties and authorised persons to view the status of a matter and documents filed in that matter, subject to any restriction imposed by the Tribunal;

(i) recording proof of transmission, delivery, receipt or access in relation to any electronic notice or document;

(j) facilitating virtual, hybrid or in-person hearings; and

(k) performing any other function necessary for the efficient and fair management of proceedings before the Tribunal.

(3) The Tribunal Portal shall include reasonable safeguards to protect the confidentiality, privacy and security of personal information, health information, medical records and other sensitive information filed or generated in proceedings before the Tribunal.

(4) Access to the Tribunal Portal shall be limited to the Tribunal, the Secretary, authorised staff of the Secretariat, parties to the proceedings, attorneys-at-law, nominated representatives, parents or guardians, mental health facilities, mental health professionals and any other person authorised by the Tribunal or by rules made under this Act.

(5) Where the Tribunal Portal is unavailable, or where a person cannot reasonably use the Tribunal Portal by reason of disability, lack of access to technology, urgency, detention, admission to a mental health facility or any other sufficient reason, the Secretary shall permit filing, service, notice or participation by email, telephone, messaging service, in person, orally, in writing or by any other appropriate means.

(6) The use of the Tribunal Portal shall not limit the power of the Tribunal to regulate its own proceedings, observe the rules of natural justice and afford each party a fair opportunity to be heard.

65. Applications to the Tribunal

(1) A person who is diagnosed with or is exhibiting symptoms of a mental illness, a nominated representative, a member of the public, or any other person not being a child may make an application on Form 5 of the Schedule to the Tribunal under this section.

(2) Applications on behalf of a child may be made by the parent or guardian of the child or the nominated representative where the parent or guardian is absent.

(3) An application shall be filed through the Tribunal Portal, unless —

(a) the applicant cannot reasonably access or use the Tribunal Portal;

(b) the matter is urgent;

(c) the Tribunal Portal is unavailable; or

(d) the Secretary permits another method of filing.

(4) Where any of the circumstances mentioned in subsection (3)(a), (b), (c) or (d) applies, an application may be made by email, telephone, messaging service, in person, orally, in writing or by any other means approved by the Secretary, and the Secretary shall cause the application to be entered on the Tribunal Portal as soon as practicable.

(4) The application shall specify –

(a) the name and contact details of the applicant;

(b) the capacity in which the applicant has brought the application;

(c) the name of the person to whom the application refers, if different from the applicant; and

(d) the grounds of the application;

(e) whether the application is urgent and the reasons for the urgency;

(f) the names and contact details, where known, of any nominated representative, parent, guardian, attorney-at-law, consultant-in-charge, mental health facility or other person who should receive notice of the application; and

(g) any reasonable accommodation, communication support, interpreter, assistance or special measure required by the applicant or the person to whom the application relates.

(5) Upon the filing or entry of an application, the Tribunal Portal shall, so far as practicable, automatically —

(a) generate a matter number;

(b) record the date and time of filing or entry;

(c) issue an acknowledgement of receipt on Form 6 of the Schedule;

(d) open an electronic case file;

(e) notify the Secretary of the filing or entry of the application; and

(f) identify for persons any statutory or procedural deadline applicable to the matter.

(6) An acknowledgement of receipt by the Secretary shall be issued, as soon as practicable, to the applicant through the Tribunal Portal within one (1) day after the application is filed or entered.

(7) The acknowledgement by the Secretary under subsection (6) shall include –

(a) the matter number;

(b) the date and time of filing or entry;

(c) information on the next procedural steps;

(d) information on how the applicant may access or obtain updates on the matter;

(e) any urgent direction issued by the Secretary or the Tribunal.

(8) There shall be no fee or charge levied on making the application.

66. Electronic notices and service

(1) The Secretary shall, after consultation with the Chairperson or in accordance with directions issued by the Tribunal, cause the Tribunal Portal to generate and issue a hearing notice or case-management notice on Form 7 of the Schedule to each person entitled to receive notice of the matter.

(2) On Form 8 of the Schedule, a notice, summons, direction, order, decision, reason or other document required or permitted to be issued by the Tribunal or the Secretary may be issued, served or delivered—

(a) through the Tribunal Portal;

(b) by email;

(c) by text message or other electronic messaging service;

(d) by hand delivery;

(e) by post;

(f) orally, where urgency or the circumstances of the person require it, followed by written or electronic confirmation; or

(g) by any other method authorised by the Tribunal or prescribed by rules.

(3) A hearing notice shall specify —

(a) the matter number;

(b) the names of the parties or persons concerned, subject to any confidentiality restriction;

(c) the date and time of the hearing;

(d) whether the hearing will be conducted in person, virtually or by hybrid means;

(e) the place of the hearing or the electronic link and instructions for joining the hearing;

(f) any documents, reports or submissions required before the hearing;

(g) the deadline for filing any required document, report or submission;

(h) the right to be represented by an attorney-at-law or other representative permitted under this Act;

(i) any reasonable accommodation, communication support, interpreter, assistance or special measure arranged or required; and

(j) any other direction of the Tribunal.

(4) An electronic notice issued through the Tribunal Portal is deemed to have been served when the notice is made available to the applicant through the Tribunal Portal and an automated notification is transmitted.

(5) If the Tribunal is satisfied that the notice under subsection (2) was not received and that the recipient would be prejudiced by the deemed service, the Secretary shall arrange alternative service of the document.

(6) Nothing in this section authorises service or disclosure of information to a person who is not entitled to receive it under this Act, any other law or an order or direction of the Tribunal.

67. Proceedings before the Tribunal

(1) The Tribunal shall sit as and when there is a matter for the Tribunal to adjudicate upon, and sittings may be managed, listed and notified through the Tribunal Portal.

(2) The Tribunal shall not be bound by the strict rules of evidence but shall consider evidence of a greater probative value above hearsay or unsupported evidence received even though such arguments are not based, in whole or in part, on principles underlying the formal rules of evidence.

(3) The Tribunal may inform itself on any matter in a manner as it thinks just and may take into account opinion evidence and facts and material as it considers relevant, but in any case the parties to the proceedings shall be given the opportunity, if they so desire, of adducing evidence and responding to evidence received by the Tribunal.

(4) A hearing may be conducted —

(a) in person;

(b) by video conference or other secure electronic means; or

(c) by any combination of the methods referred to in paragraphs (a), (b) and (c),

provided that the Tribunal is satisfied that the method of hearing is fair and appropriate in all the circumstances.

(5) The Tribunal may give case-management directions through the Tribunal Portal or by any other appropriate means, including directions —

(a) requiring the filing or production of documents, reports or submissions;

(b) setting deadlines;

(c) listing or re-listing a hearing;

(d) requiring attendance at a hearing;

(e) arranging interpretation, communication support or other reasonable accommodation;

(f) restricting access to confidential information;

(g) permitting or requiring virtual or hybrid attendance; and

(h) making any other direction necessary for the fair, efficient and timely determination of the matter.

(6) Quorum of the Tribunal shall consist of three (3) members of the Tribunal, one of whom shall be the Chairperson.

(7) Each member of the Tribunal shall have an equal vote.

(8) A decision of the Tribunal shall be reached by a majority vote and in the event of equality of votes the Chairperson shall have a casting vote.

(9) A person summoned to appear before the Tribunal may be represented by an attorney-at-law or by a representative of the person or any other person as the case may be or the person may represent themselves.

(10) The Tribunal shall, before making a decision —

(a) afford the parties the opportunity to be heard; and

(b) observe the rules of natural justice.

(11) Proceedings of the Tribunal shall not be open to the public.

(12) The electronic record maintained on the Tribunal Portal shall form part of the official record of the proceedings.

68. Decisions of the Tribunal

(1) At the conclusion of the proceedings, the Tribunal shall prepare and deliver its decision together with the reasons on Form 9 of the Schedule for such decision within ten (10) days of completion of the hearing.

(2) Where a decision, order, direction or reason is delivered through the Tribunal Portal, the Tribunal Portal shall record the date and time of delivery and generate such notifications as are necessary to inform the persons entitled to receive it.

(3) In the event that the Tribunal is requested to act urgently, a decision of the Tribunal may be delivered orally within twenty (20) hours and a written decision shall be issued within ten (10) days.

(4) The Secretary shall ensure that any order or direction requiring action by a mental health facility, consultant-in-charge, mental health professional, nominated representative, parent, guardian or any other person is transmitted to that person by the Tribunal Portal or by another appropriate means and that proof of transmission or service is recorded.

69. Rules of procedure and appeals

(1) The Minister may make rules with respect to the proceedings, practices and procedures of the Tribunal, including rules for –

(a) the filing, entry, amendment and withdrawal of applications;

(b) the use, administration, security and operation of the Tribunal Portal;

(c) electronic filing, electronic signatures, electronic notices, electronic service and proof of service;

(d) automated acknowledgements, notifications, reminders, hearing listings, compliance alerts and case-management workflows;

(e) access to and restriction of access to electronic case files, documents and records;

(f) the conduct of hearings;

(g) the recording, storage, correction, retention and destruction of electronic records;

(h) the protection of confidential, personal, medical and child-related information;

(i) alternative filing, service and hearing arrangements for persons who cannot reasonably access or use the Tribunal Portal;

(j) accessibility, reasonable accommodation, interpretation and communication support;

(k) appeals from decisions of the Tribunal; and

(l) the remuneration and allowances to be paid to the members of the Tribunal.

(2) Any person aggrieved by the decision of the Tribunal given or made upon any application before it, may appeal to the High Court or Court of Appeal within such time and in such manner as may be prescribed by rules.

PART VIII

MENTAL HEALTH SERVICES BOARD

70. Establishment of the Mental Health Services Board

There is hereby established a Board to be known as the Mental Health Services Board.

71. Functions of the Board

The functions of the Board are to —

(a) oversee the planning and management of mental health care and treatment in Antigua and Barbuda;

(b) promote standards of best practice and efficiency of mental health services;

(c) set standards for accreditation of mental health facilities;

(d) set criteria and standards for specific mental health services, interventions, and treatments as necessary, including developing guidelines for the use of chemical restraints;

(e) inspect with sufficient frequency every mental health facility to ensure that the conditions, treatment and care of patients comply with the provisions of this Act;

(f) receive and maintain a register and make available advance directives lodged with the Board or the Board's representative in accordance with section 21;

(g) review the use of restraints in mental health facilities and receive applications for the use of restraints to be extended under section 43; and

(i) advise and assist the Minister on other matters related to mental health care and treatment in Antigua and Barbuda.

72. Membership of the Board

(1) The Board shall consist of —

(a) the person in the Ministry of Health with responsibility and oversight for mental health service delivery;

(b) the Director or Deputy Director of the Department of Social Services;

(c) one registered mental health professional;

(d) one registered psychiatrist or a medical practitioner with training and experience in mental health of at least ten (10) years;

(e) one service user recommended by the person in the Ministry of Health with responsibility and oversight for mental health service delivery;

(f) a person appointed by the Minister with responsibility for health; and

(g) a representative from a registered non-profit organization.

(2) The Minister shall appoint the members of the Board on such terms and conditions and may grant such allowances and remuneration as may be prescribed.

(3) The Minister shall appoint one of the members of the Board as Chairperson of the Board.

(4) The appointment of the Chairperson and members of the Board shall be published by notice in the Gazette.

(5) The members of the Board who are not ex-officio members shall hold office for three years and are eligible for reappointment for a maximum of two (2) consecutive terms.

(6) A member, except an ex-officio member, may resign from office by letter addressed to the Minister.

(7) Where a person is appointed to replace another person under subsection (6) the person so appointed shall serve as a member for the remaining period of office of the person replaced and may be eligible for re-appointment.

73. Secretary to the Board

(1) The Board shall be provided with sufficient resources and funding by the Ministry of Health, however titled, to allow it to effectively carry out its functions under this Act.

(2) The Minister shall appoint a Secretary to the Board who shall be responsible for –

(a) administration and clerical affairs of the Board;

(b) convening the sittings of the Board after consultation with the Chairperson and members;

(c) issuing summonses and notices on behalf of the Board;

(d) implementing decisions made by the Board;

(e) taking appropriate steps to enable the Board to enforce its orders;

(f) ensuring that orders or directions given by the Board are complied with; and

(g) preparing an annual budget at the direction of the Chairperson for approval by the Minister.

(3) The Board may, with the approval of the Minister, appoint administrative and clerical staff as are necessary to support staff the proper performance of the functions of the Secretary.

(4) Staff of the Secretariat shall be public officers or may be engaged on contract in accordance with applicable public service regulations.

(5) The Board may engage consultants or experts where specialised technical knowledge is required.

74. Meetings of the Board

(1) The Board shall meet at least six (6) times a year or otherwise as —

(a) the Chairperson may direct; or

(b) may be requested in writing to the Chairperson by not less than five (5) members of the Board.

(2) The time and place of a meeting of the Board shall be determined by the Chairperson.

(3) For the purposes of this Part, six (6) members of the Board shall constitute a quorum for a meeting.

(4) A meeting of the Board shall be presided over by the Chairperson but in the absence of the Chairperson the members present at the meeting shall elect a member to preside over the meeting and that member shall have all the powers of the Chairperson at the meeting.

(5) Every matter for determination by the Board at a meeting shall be decided by a simple majority of votes of the members present and voting thereon.
(6) Each member of the Board has one vote and in the event of an equality of votes the chairperson presiding at the meeting shall have a casting vote.
(7) A member of the Board who has a direct interest in a matter that falls to be decided at a meeting of the Board shall notify the Chairperson or, if the member is the Chairperson, notify the Secretary of the interest and, the member with the direct interest shall not be present or vote at the meeting where the matter is considered or decided unless the Board authorizes otherwise.
(8) The Board shall, through the Chairperson, submit an annual report of its activities to the Minister and the Minister shall present the report to both Houses of Parliament.

75. Decision by Circulation of paper

Where a matter requires a decision of the Board and it is not convenient or possible for the Board to meet to determine the matter, the Secretary shall, on the instructions of the Chairperson, circulate papers regarding the matter to all members for consideration and decision or approval and if the members unanimously approve a decision or resolution by signing it, the decision or resolution shall have the same effect as a decision or resolution passed at a meeting of the Board.

76. Members to continue until new members are appointed

Notwithstanding section 72(5), where at the end of the period specified in that section, all the members of the Board vacate office and the new members of the Board have not been appointed, the persons vacating as members shall continue until the appointment of the new members of the Board or for a further period of three (3) months, whichever occurs first.

PART IX

OFFENCES AND PENALTIES

77. Prohibited special treatment

(1) A person commits an offence if the person –
(a) administers electro-convulsive therapy or psycho-surgery to a child;
(b) administers electro-convulsive therapy or psycho-surgery without consent by the person with a mental illness or his or her nominated representative; or
(c) administers electro-convulsive therapy or psycho-surgery in contravention with the provisions of this Act.

(2) A person convicted under subsection (1) shall be liable to a fine not exceeding one hundred and fifty thousand dollars ($150,000.00) or to imprisonment for up to three (3) years or both.

78. Exploitation of a person with a mental illness

(1) A person commits an offence if the person knowingly or wilfully exploits a person with a mental illness for –
   (a) financial gain;
   (b) sexual intercourse, sexual purposes or sexual activities; or
   (c) any other improper motive.

(2) A person convicted under subsection (1) shall be liable to a fine not exceeding one hundred and fifty thousand dollars ($150,000.00) or to imprisonment for up to three (3) years or both.

79. Abuse, neglect or ill-treatment of a person with a mental illness

(1) A person who has the care, custody or responsibility for the treatment of a person with a mental illness commits an offence if the person –
   (a) carnally knows or attempts to carnally know, assaults, abuses, neglects, intimidates or subjects the person with a mental illness to degrading or inhumane treatment; or
   (b) wilfully neglects the care of the person with a mental illness.

(2) A person convicted under subsection (1) shall be liable to a fine not exceeding one hundred fifty thousand dollars ($150,000.00) or to imprisonment for up to three (3) years or both.

80. Unlawful admission to a mental health facility

(1) A person commits an offence if the person knowingly or wilfully causes or authorizes the admission of a person to a mental health facility –
   (a) as a means of punishment for the person with a mental illness;
   (b) by means of fraud, misrepresentation, coercion or undue influence; or
   (c) in contravention of the admission procedures and mechanisms established under this Act.

(2) A person convicted under subsection (1) shall be liable to a fine not exceeding one hundred thousand dollars ($100,000.00) or to imprisonment for up to two (2) years or both.

81. Unlawful detention

(1) A person commits an offence if the person knowingly or wilfully detains a person with a mental illness in a mental health facility after the lawful period of detention has expired under this Act.

(2) A person convicted under subsection (1) shall be liable to a fine not exceeding one hundred thousand dollars ($100,000.00) or to imprisonment for up to two (2) years or both.

82. Unlawful restraint or seclusion

(1) A person commits an offence if the person -
  (a) uses restraints or confinement as a means of punishment for the person with a mental illness;
  (b) exceeds the lawful time limits on restraint as set out under this Act; or
  (c) restrains or confines a person with a mental illness otherwise than in accordance with the provisions of this Act.

(2) A person convicted under subsection (1) shall be liable to a fine not exceeding fifty thousand dollars ($50,000.00) or to imprisonment for up to one (1) year or both.

83. Discrimination against a person with a mental illness

(1) If a person has a diagnosis of or has exhibited symptoms of a mental illness, another person commits an offence if that person, without lawful justification, discriminates against the person who has a diagnosis of or has exhibited symptoms of a mental illness, in relation to—
  (a) employment, recruitment, promotion, or conditions of employment;
  (b) admission to, participation in, or access to education or training;
  (c) access to healthcare services;
  (d) access to insurance services; or
  (e) the provision of goods, services, accommodation, or facilities available to the public.

(2) Notwithstanding subsection (1), discrimination shall not apply where the differential treatment—
  (a) is reasonably necessary for the protection of the health or safety of the person or others; or
  (b) is authorised by law.

(3) A person convicted under subsection (1) shall be liable to a fine not exceeding fifty thousand dollars ($50,000.00) or to imprisonment for up to one (1) year or both.

84. Obstruction of officials

(1) A person commits an offence if the person –
  (a) obstructs a mental health professional performing duties under this Act;
  (b) obstructs a police officer or prison officer assisting or executing his or duties under this Act; or
  (c) obstructs the Tribunal or the Board in execution of its functions.

(2) A person convicted under subsection (1) shall be liable on summary conviction to a fine not exceeding twenty-five thousand dollars ($25,000.00) or to imprisonment for up to one (1) year or both.

85. Failure to provide medical reports or documentation

(1) A consultant-in-charge or mental health professional or other responsible medical officer commits an offence if that person, without lawful excuse –
   (a) refuses to prepare or issue a mental health report or discharge report or other medical documentation under this Act;
   (b) refuses to transmit a mental health report or discharge report or other medical documentation to the Magistrate, the Tribunal or the Board as required under this Act; or
   (c) knowingly provides incomplete or false reports or documentation under this Act.

(2) A person convicted under subsection (1) shall be liable on summary conviction to a fine not exceeding twenty-five thousand dollars ($25,000.00) or to imprisonment for up to one (1) year or both.

86. Falsification of records or reports

(1) A person commits an offence if the person **–**
   (a) provides or submits a false mental health report;
   (b) falsifies or forges medical records such as admission or discharge reports or records; or
   (c) knowingly or negligently provides false medical information to any person under this Act.

(2) A person convicted under subsection (1) shall be liable on summary conviction to a fine not exceeding twenty thousand dollars ($20,000.00) to imprisonment for up to one (1) year or both.

87. Failure to comply with a decision of the Tribunal or the Board

A person who, without reasonable cause, fails to comply with a decision of the Tribunal or the Board under this Act commits an offence and shall be liable on summary conviction to a fine not exceeding twenty-five thousand dollars ($20,000.00) or to imprisonment for up to six (6) months or both.

88. Unlawful disclosure of confidential information

(1) A person commits an offence if the person unlawfully discloses confidential information of a person with a mental illness concerning–
   (a) the diagnosis or treatment and care plan for the person with a mental illness;
   (b) a mental health report prepared by a mental health professional upon a mental screening or assessment under this Act or
   (c) medical records or personal information of the person with a mental illness.

(2) Subsection (1) does not apply where disclosure is –
   (a) required under the provisions of this Act or by any other enactment;

(b) ordered by the Magistrate or the court pursuant to court proceedings; or

(c) is required by a mental health professional for the care and treatment of the person with a mental illness.

(3) A person convicted under subsection (1) shall be liable on summary conviction to a fine not exceeding fifteen thousand dollars ($15,000.00).

PART X

MISCELLANEOUS

89. Protection of person administering the Act

No mental health service provider shall be found liable to any civil or criminal liability for administering mental health care and treatment without proof of bad faith or unreasonable practice.

90. Regulations

(1) The Minister may make regulations for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the provision of subsection (1), regulations may provide for—

(a) standards for determination of mental illness;

(b) manner of making an advance directive;

(c) manner of revoking, amending, or cancelling an advance directive; and

(d) form of discharge report under section 35; and

(e) the fees to be charged under this Act.

(1) Regulations made under this section may create offences.

(2) The Regulations under subsection (4) provide that contravention of or failure to comply with provisions of the regulations shall be an offence and such offences shall be punishable with imprisonment or fine or with both such imprisonment and fine.

91. Savings and Transitional

All acts done under the Mental Treatment Act Cap. 274, decisions taken prior to the date of commencement of this Act, shall continue to have effect until it is amended, annulled or withdrawn in accordance with the provisions of this Act.

92. Repeal

The following Acts are hereby repealed –

(a) The Female Persons of Unsound Mind (Protection) Act, Cap. 167; and

(b) The Mental Treatment Act (Cap 274).

SCHEDULE

The Mental Health Care Act

FORM 1 –

CAPACITY ASSESSMENT RECORD

S. 19

Person being assessed

Full name: _____
Date of birth: _____
Address: _____
Contact Information (telephone #/ email address):_____
Medical Benefits # (if any): _____
Patient brought: _____

- ☐ Self
- ☐ Nominated representative,
- ☐ parent,
- ☐ guardian
- ☐ caregiver

[name and contact details of Nominated representative, parent, guardian or caregiver]

_____
_____

Decision to which this assessment relates

- ☐ Admission
- ☐ Treatment
- ☐ Other: _____

Assessment details:

State the date, time and location of the assessment:

_____
_____
_____

Findings:
_____
_____
_____

Conclusion

- ☐ The person has capacity to make decisions regarding their mental health care and treatment.
- ☐ The person lacks capacity to make decisions regarding their mental health care and treatment

Date by which reassessment is required, if applicable: _____

Certification

Mental health professional conducting assessment:
[name, profession, registration number and contact details]
_____
_____
_____
_____
_____
_____

I certify that I conducted this assessment in accordance with section 19 of the Act.

Signature: _____ *Stamp*

Date and time: _____

Name of Facility: _____

The Mental Health Care Act

FORM 2 –

VOLUNTARY ADMISSION APPLICATION AND INFORMED CONSENT

S. 34 and 37(4)

Applicant:

Full name: _____
Date of birth: _____
Address: _____
Contact Information (telephone #/email address):_____
Medical Benefits # (if any): _____
Facility to which admission is sought:_____

Application Declaration

I _____ apply to be voluntarily admitted to the mental health facility _____ for care and treatment.

I confirm that the application is made freely and without duress or undue influence.

State briefly the reason for seeking admission (in the applicant's own words where practicable):
_____
_____

Preferred communication method and accommodation required:
_____
_____

Do you have a nominated representative?
- ☐ Yes
- ☐ No
- ☐ Unknown

If yes, provide the name and contact details _____
_____

Information and consent

I have been given information, in a manner and language that I understand, about the nature and purpose of admission, proposed assessment and treatment, my rights, and my right to leave the facility subject to the Act.

Applicant's signature / mark: _____

Date and time: _____

**********For Office Use**********

Received by:

Name: _____

Position: _____

Signature: _____

Date and time received: _____

The Mental Health Care Act

FORM 3 –

APPLICATION FOR FACILITATED ADMISSION BY NOMINATED REPRESENTATIVE

S. 36 and 39

Nominated Representative

Name of Nominated Representative: _____
Address:_____
Contact Information (telephone #/email address):_____
Relationship to person being admitted: _____
_____

Person for whom facilitated admission is sought

Full name: _____
Date of Birth: _____
Address: _____

Does the patient have an Advance directive?:

- ☐ Known
- ☐ Not known
- ☐ Copy attached

Application

I apply for the facilitated admission of the person named above for the reasons provided below:

Is the person able to make decisions about his/her mental health care and treatment?

- ☐ Yes
- ☐ No

Briefly describe the patient's behavior

_____
_____
_____

Has the patient shown any signs of harming or wanting to harm himself/herself?

- ☐ Yes
- ☐ No

Has the patient shown any signs of violence towards himself/herself or others?

- ☐ Yes
- ☐ No

How long has the person been exhibiting the signs mentioned above?

- ☐ less than a day
- ☐ between 24 to 48 hours
- ☐ less than a week
- ☐ over a week

Is this the first time that the patient would be admitted to a mental health facility?

- ☐ Yes
- ☐ No

If no, state the name of the mental health care facility where the person was previously admitted:

_____
_____

Is the patient currently on any medication?

- ☐ Yes
- ☐ No

If yes, please state the name of the medication the patient is currently taking:

_____
_____

Declaration: I _____ declare that the information in this application is true to the best of my knowledge and belief.

Applicant's signature: _____

Date and time: _____

*************FOR OFFICE USE ONLY*************

Receiving officer

Name: _____

Position: _____

Signature: _____

Date and time received: _____

The Mental Health Care Act

FORM 4 –

DISCHARGE REPORT (CONFIDENTIAL)

S. 35

Person Discharged:

Full name: _____
Date of birth: _____
Address: _____
Contact Information (telephone #/email address):_____
Medical Benefits # (if any): _____
Name and contact details of Nominated representative, parent, guardian or caregiver (relationship to person)

_____
_____
_____
_____

Facility and admission details:

Mental health facility: [name and address]

_____
_____

Consultant-in-charge: [name]

_____
_____

Date and time of admission:

_____
_____

Admission type:

- ☐ Voluntary
- ☐ Facilitated
- ☐ Emergency converted to voluntary or facilitated admission
- ☐ Other:

_____

Admission reference number: _____
**Tribunal matter or order reference, if applicable:

_____
_____

Discharge details:

Date and time discharge:

_____
_____

Place to which the person is discharged:

- ☐ Home
- ☐ Community Accommodation
- ☐ Another health facility
- ☐ Prison custody
- ☐ Other

Basis and reasons for discharge:

- ☐ The person has requested self-discharge from a voluntary admission.
- ☐ The person no longer meets the criteria for facilitated admission.
- ☐ The period of emergency treatment has ended and no further admission is required.
- ☐ The person is being transferred to another facility; complete the transfer record.
- ☐ The person is to receive outpatient care in the community or prison.
- ☐ Other statutory or clinical basis:

_____
_____

Reasons supporting discharge:

_____
_____

Acknowledgement:

I _____acknowledge that I have received or have been offered a copy of this discharge report and that the discharge and aftercare arrangements have been explained to me.

Person signature: _____

Date and time: _____

If the person cannot or declines to sign, state the reason and identify the witness:

Nominated representative, parent, guardian or caregiver acknowledgement, where applicable:

Name: _____

Signature: _____

Date and time: _____

Certification:

I certify that this discharge report has been prepared in accordance with section 35 of the Mental Health Care Act 2026 and that the discharge arrangements set out above are, in my professional opinion, appropriate.

Consultant-in-charge:_____

Signature: _____

Date and time: _____

Facility record:

- Report reference number: _____
- Date and time report issued: _____
- Person issuing report: _____

The Mental Health Care Act

FORM 5 –

APPLICATION TO THE MENTAL HEALTH REVIEW TRIBUNAL

S. 65

Applicant:

Name: _____
Address: _____
Telephone number: _____
Email: _____
Capacity in which applicant acts:

- ☐ Person concerned or affected
- ☐ Nominated representative
- ☐ Parents
- ☐ Guardian
- ☐ Member of public
- ☐ Other: _____

Person to whom the application relates (if different):

Name: _____
Date of Birth: _____
Telephone number: _____
Email: _____
Current location / facility: _____

Type of application:

- ☐ Access to medical records or release of withheld information
- ☐ Capacity determination
- ☐ Discharge from facilitated admission / appeal against facilitated admission
- ☐ Restriction of access of Parent/Legal Guardian
- ☐ Extension of facilitated admission
- ☐ Rights complaint
- ☐ Special treatment.
- ☐ Restraint or seclusion
- ☐ Other matter within the Tribunal's jurisdiction: _____

_____

Grounds and relief sought:
(State the facts, reasons and order, direction or other remedy sought and the reasons and date by which action is required)

Persons to receive notice, where known:
(Provide names and contact details of relevant nominated representatives, parent, guardian, attorney-at-law, consultant-in-charge, facility, professional or other person)

Access and participation requirements:

Do you require any forms of reasonable accommodation for the trial hearing such as:

- ☐ Support Individuals (Please name these persons, if any):
  _____
  _____
- ☐ Video Conferencing Arrangements
- ☐ Frequent trial breaks or adjournments to manage any symptoms or take medication
- ☐ Sensory modifications to the environment (minimizing distractions or noises, lowering harsh lighting, etc.)
- ☐ Providing an Interpreter
- ☐ Providing a service animal
- ☐ Providing slower or repeated questions during trial
- ☐ Providing auxiliary aids (such as larger text on documents or screens, braille, etc.)
- ☐ Other accommodations:
  _____
  _____
  _____

Documents attached in support of application:

_____
_____
_____
_____
_____
_____
_____
_____

Applicant's signature: _____

Date and time: _____

Secretary's filing record:

Matter number: _____

Date and time filed /entered: _____

Filing officer: _____

The Mental Health Care Act

FORM 6 –

TRIBUNAL ACKNOWLEDGEMENT OF RECEIPT AND CASE OPENING NOTICE

S. 65

To: [Applicant]

The Tribunal acknowledges receipt of an application concerning [name or matter title].

- Matter number: _____
- Date and time filed /entered: _____
- Next procedural steps: _____
- How to access updates or obtain information: _____
  _____
  _____
- Statutory or procedural deadlines identified at filing:_____
  _____
  _____
- Urgent direction, if any:

_____
_____
_____
_____
_____
_____
_____

Secretary's name: _____

Signature / authentication: _____

Date and time: _____

The Mental Health Care Act

FORM 7 –

TRIBUNAL HEARING NOTICE / CASE MANAGEMENT NOTICE

S. 66

Matter number: [ ]
Persons concerned: [names, subject to confidentiality restrictions]

A hearing /case-management event has been fixed as follows:

- Date and time: _____
- Format:
  - ☐ in person
  - ☐ virtual
  - ☐ hybrid
- Secure electronic link code: _____
- Documents, reports or submissions required:
  _____
  _____
  _____
- Filing deadline: _____
- Right to be represented by attorney-at-law or other permitted representative
- Information of accommodation, interpreter, communication support or special measure arranged:
  _____
  _____
  _____
- Other directions:
  _____
  _____
  _____

Issued by the Secretary on behalf of the Tribunal.

Secretary's name: _____ Signature / authentication: _____

Date and time: _____

The Mental Health Care Act

FORM 8 –

PROOF AND RECORD OF TRIBUNAL SERVICE OR TRANSMISSION

S. 66

Matter number: [ ]

Document served or transmitted:

- ☐ Application
- ☐ Hearing Notice
- ☐ Summons
- ☐ Directions
- ☐ Order/Decision
- ☐ Other:_____

- Recipient: _____
- Address / email / Portal account / telephone number used: _____
  _____
  _____
- Method of service:
  - ☐ Portal
  - ☐ Email
  - ☐ Messaging
  - ☐ Hand delivery
  - ☐ Post
  - ☐ Other:_____
- Date and time delivered: _____
- Automated notification transmitted: [Yes / No]
- Evidence of transmission, delivery, receipt or access: [ ]
  _____
  _____
- If alternative service methods used, reasons:
  _____
  _____

Person completing record: [name and signature]_____
Date and time: _____

The Mental Health Care Act

FORM 9 –

TRIBUNAL DECISION, ORDER AND REASONS

S. 68

Matter number: [ ]

Parties / persons concerned: [ ]

Hearing:

Date(s): _____

_____

Members sitting: _____

_____

Persons present or represented: _____

_____

Method of hearing:

- ☐ in person
- ☐ virtual
- ☐ hybrid

Decision / order / direction:

The Tribunal decides and orders as follows:

_____
_____
_____
_____
_____
_____
_____

Reasons:
Issues determined:

Evidence and material considered:

Findings and reasons:

Compliance and service:
Persons required to take action:

Actions required and deadlines:

Date and method for service / transmission:

_____
_____

Appeal information, if applicable:

_____
_____
_____

Chairperson's Signature / authentication: _____

Date and time: _____

Passed the House of Representatives on the day of , 2026

……..
Speaker.

……
Clerk to the House of Representatives.

Passed the Senate on the day of , 2026.

……..
President.

……..
Clerk to the Senate.

EXPLANATORY MEMORANDUM

The Mental Health Care Bill 2026 seeks to enact a modern legislative framework for mental health care and treatment in Antigua and Barbuda and to repeal the Mental Treatment Act, Cap. 274. It provides for the enhancement of the delivery of mental health care services, protects and enforces the rights and freedoms of persons with mental illness, promotes community-based care, integrates mental and physical health care, and establishes oversight mechanisms for the administration of mental health services.

The Bill is rights-based and patient-centred. It provides that mental illness must be determined according to nationally or internationally accepted medical standards and not on the basis of social, cultural, political, religious, sexual, economic or other irrelevant factors. It also recognises that a mental health diagnosis alone does not remove a person's legal capacity or fundamental rights. The Bill also places duties on mental health service providers and the Government to deliver high-quality, recovery-oriented care, support suicide prevention, reduce stigma, strengthen mental health training, promote community-based services and ensure parity between mental and physical health care.

PART I — PRELIMINARY –

Clauses 1 to 4

This Part provides for preliminary matters, including the short title and commencement of the Act, definitions of key terms, the objectives of the Act and the determination of mental illness. In particular, clause 3 sets out the core objectives of the legislation, including comprehensive mental health care, rights protection, supported decision-making, oversight safeguards, provision for persons subject to criminal proceedings, and the establishment of the Mental Health Services Board and Mental Health Review Tribunal.

PART II — DUTIES OF PROVIDERS AND THE GOVERNMENT –

Clauses 5 and 6

This Part sets out the responsibilities of mental health service providers and the Government. Clause 5 requires providers to deliver person-centred, recovery-oriented care, use the least restrictive alternative, respect privacy and confidentiality, prevent abuse and discrimination, and involve persons with mental illness and their support networks in care decisions. Clause 6 requires the Government to develop a National Mental Health Plan, support suicide prevention and stigma-reduction programmes, train relevant officials and first responders, establish community-based rehabilitation and support services, and ensure equality between mental and physical health care.

PART III — RIGHTS AND PROTECTION OF PERSONS WITH MENTAL ILLNESS –

Clauses 7 to 18

This Part recognises and protects the rights of persons diagnosed with or exhibiting symptoms of mental illness. Key provisions include reasonable accommodation under clause 7; recognition of constitutional rights under clause 8; access to education and school-based child safe spaces under clause 9; access to work, workplace accommodation and personal wellness days under clause 10; community living rights under clause 11; access to mental health care under clause 12; parity with physical health care and insurance protection under clause 13; access to medical records under clause 14; rights to information and communication under clauses 15 and 16; rights within mental health facilities under clause 17; and rights of nominated representatives, relatives and caregivers under clause 18.

PART IV — CAPACITY, SUPPORTED DECISION-MAKING, ADVANCE DIRECTIVES AND NOMINATED REPRESENTATIVES –

Clauses 19 to 32

This Part establishes a supported decision-making framework. Clause 19 provides for the presumption of capacity and the criteria for determining whether a person can make mental health care and treatment decisions. Clauses 20 to 25 provide for advance directives, their registration, their non-application to emergency treatment, review by the Tribunal, application to children and protection from liability for professionals acting in relation to advance directives.

PART V — CARE AND TREATMENT OF PERSONS WITH MENTAL ILLNESS –

Clauses 33 to 47

This Part regulates admission, care and treatment. Clauses 33 to 35 provide that admission should be consistent with admission for physical illness, prioritise voluntary admission where possible and require discharge reports. Clauses 36 to 39 establish facilitated admission where a person lacks capacity and statutory risk criteria are met, including time limits, Tribunal extension procedures and special rules for children. Clauses 43 to 45 regulate seclusion, restraint, leave and absence without leave. Clauses 46 and 47 regulate electro-convulsive therapy, psycho-surgery and clinical or experimental research.

PART VI — PERSONS SUBJECT TO CRIMINAL PROCEEDINGS WITH A MENTAL ILLNESS

Clauses 48 to 59

This Part provides for the assessment, care and treatment of persons with mental illness who are detained, on remand, convicted or otherwise subject to criminal proceedings. Clauses 49 to 56 require timely mental health screening and reporting to a Magistrate for detained persons, persons on remand and convicted prisoners, and empower the Magistrate to make appropriate orders for admission, release, custody, treatment or other lawful measures.

PART VII — MENTAL HEALTH REVIEW TRIBUNAL –

Clauses 60 to 69

This Part establishes the Mental Health Review Tribunal and provides for its membership, powers, procedures and appeals. Clauses 60 and 61 establish the Tribunal and its membership. Clause 62 sets out the Tribunal's powers, including reviewing facilitated admissions, hearing complaints and appeals, issuing care and treatment orders, considering special treatment and restraint matters, summoning witnesses and requiring documents.

Part VIII — Mental Health Services Board –

Clauses 70 to 76

This Part establishes the Mental Health Services Board. Clauses 70 and 71 establish the Board and set out its functions, including oversight of mental health care planning and management, promotion of best practice, accreditation standards, inspection of facilities, maintenance of advance directives, review of restraint practices and advice to the Minister.

Part IX — Offences and Penalties –

Clauses 77 to 88

Part IX creates offences and penalties to support compliance with the Act and protect persons with mental illness. Clauses 77 to 83 address prohibited special treatment, exploitation, abuse, neglect, unlawful admission, unlawful detention, unlawful restraint or seclusion and discrimination. Clauses 84 to 88 address obstruction of officials, failure to provide medical reports or documentation, falsification of records or reports, failure to comply with decisions of the Tribunal or Board and unlawful disclosure of confidential information.

Part X — Miscellaneous –

Clauses 89 to 92
Part X contains miscellaneous and final provisions. Clause 89 provides protection from civil or criminal liability for persons administering the Act in good faith and without unreasonable practice. Clause 90 confers regulation-making powers on the Minister. Clause 91 preserves certain acts and decisions made under the Mental Treatment Act, Cap. 274 until they are amended, annulled or withdrawn under the new Act. Clause 92 repeals the Female Persons of Unsound Mind (Protection) Act, Cap. 167 and the Mental Treatment Act, Cap. 274.

Schedule –

The Schedule contains the prescribed forms that give practical effect to key assessment, admission, discharge and Tribunal procedures under the Bill. These forms promote consistent decision-making, document the statutory safeguards that apply to voluntary and facilitated admission, discharge and Tribunal proceedings, and support the creation of an accessible and auditable record.

Hon. Michael Joseph
Minister with responsibility for Health