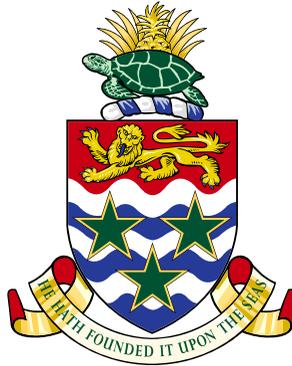


CAYMAN ISLANDS



MENTAL HEALTH (AMENDMENT) BILL, 2021

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A BILL FOR AN ACT TO AMEND THE MENTAL HEALTH ACT, 2013 TO CLARIFY THE PROCEDURE RELATING TO EMERGENCY DETENTION ORDERS; TO PROVIDE FOR ORDERS FOR PROTECTIVE CUSTODY; TO PROVIDE FOR RESTRICTIONS ON ACCESS TO ELECTRONIC NETWORKS BY PATIENTS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Health, Environment, Culture and Housing



Memorandum of OBJECTS AND REASONS

This Bill amends the Mental Health Act, 2013 (“the principal Act”) to clarify the procedure relating to emergency detention orders, to provide for orders for protective custody, to provide for restrictions on access to electronic networks by patients and for incidental and connected purposes.

Clause 1 provides the short title of the legislation.

Clause 2 provides for a general amendment of the principal Act to delete references to “Governor in Cabinet” wherever the words appear in the legislation and substitute the word “Cabinet”.

Clause 3 amends section 2 of the principal Act by repealing the definitions of certain words and introducing new definitions, in order to modernise the legislation and align it with the legislative landscape of the Islands.

Clause 3 also amends section 2 of the principal Act by introducing definitions for the words “emergency detention order”, “legal resident”, “observation order”, “order for protective custody”, “protective custody” and “treatment order”.

Clause 4 amends section 6 of the principal Act by repealing subsection (1) and substituting proposed new subsections (1), (1A), (1B) and (1C).

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

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

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

Clause 4 also amends section 6 of the principal Act by repealing subsection (7) as a consequence of the insertion of the definition of the words “emergency detention order” in the proposed amendments to section 2 of the principal Act.

Clause 5 amends the principal Act by repealing and substituting section 7. The proposed new section 7 provides that a constable shall take a person into protective custody where

the person appears to be a danger to himself or herself or other persons. The person must then be brought before a medical doctor employed by the Government to be examined.

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

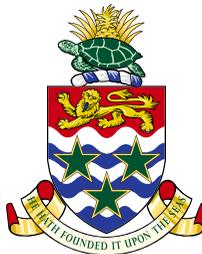
Clause 6 amends section 9 of the principal Act by deleting the words “or violates an assisted outpatient treatment order”. These words were deleted from section 9 in order to remove a minor conflict in the legislation as section 12 of the principal Act provides for the procedure in respect of a patient who violates an assisted outpatient treatment order.

Clause 7 amends section 12 of the principal Act by repealing subsections (5) and (6) and substituting proposed new subsections (5), (6), (6A) and (6B). The proposed provisions seek to align the procedure relating to orders for protective custody as well as the making of emergency detention orders in the legislation.

Clause 8 amends the principal Act by repealing and substituting section 16. The proposed new section 16 retains the current provisions on postal restrictions in the principal Act. However, the proposed new section 16 also takes into consideration technological advancements and the use of electronic networks. As such, if, in the opinion of a responsible medical officer, access to any electronic network directly or indirectly by a patient detained under the principal Act may have an adverse effect on the patient, access to any electronic network directly or indirectly by the patient may be denied. It should be noted however that where access to any electronic network has been denied to a patient, the patient concerned, or the patient’s nearest relative may, within seven days after being informed of the decision, appeal to the Mental Health Commission.



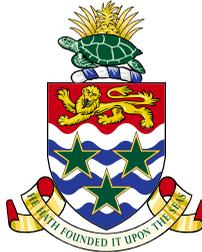
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MENTAL HEALTH (AMENDMENT) BILL, 2021

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CAYMAN ISLANDS**MENTAL HEALTH (AMENDMENT) BILL, 2021**

A BILL FOR AN ACT TO AMEND THE MENTAL HEALTH ACT, 2013 TO CLARIFY THE PROCEDURE RELATING TO EMERGENCY DETENTION ORDERS; TO PROVIDE FOR ORDERS FOR PROTECTIVE CUSTODY; TO PROVIDE FOR RESTRICTIONS ON ACCESS TO ELECTRONIC NETWORKS BY PATIENTS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Act may be cited as the Mental Health (Amendment) Act, 2021.

General amendment of the Mental Health Act, 2013 - deletion of the words "Governor in Cabinet" and substitution

2. The *Mental Health Act, 2013*, in this Act referred to as the "principal Act", is amended by deleting the words "Governor in Cabinet" wherever they appear and substituting the word "Cabinet".

Amendment of section 2 - interpretation

3. The principal Act is amended in section 2 as follows —
 - (a) by deleting the definition of "Governor";



- (b) in the definition of “medical officer”, by deleting the words “of the Islands”;
- (c) in the definition of “nearest relative”, in paragraph (a), by deleting the words “or common law partner”; and
- (d) by inserting, in the appropriate alphabetical sequence, the following definitions —

“**emergency detention order**” means an order made by a medical officer under section 6(1B) or under section 12(6A);

“**legal resident**” means —

- (a) a person who possesses Caymanian status under the repealed *Immigration Act (2015 Revision)* or any earlier law providing for the same or similar rights, and includes a person who acquired that status under Part 5 of the *Immigration (Transition) Act, 2018*; or
- (b) a person entitled to reside in the Islands in accordance with the *Immigration (Transition) Act, 2018*, the repealed *Immigration Act (2015 Revision)* or any earlier law, and whose permission to so remain is still current and has not been revoked or lost in any way;

“**observation order**” means an order made by a medical officer under section 8(1);

“**order for protective custody**” means an order made by a medical officer under section 6(1) or by a responsible medical officer under section 12(5);

“**protective custody**” means an arrangement where a person is being safeguarded by, or under the care and protection of, law enforcement authorities;

“**spouse**” in relation to a person, means a legal resident who is —

- (a) the legal husband or wife of that person; or
- (b) the civil partner of that person; and

“**treatment order**” means an order made by a responsible medical officer under section 9(1);”.

Amendment of section 6 - emergency detention order

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

- (a) by repealing subsection (1) and substituting the following subsections —
 - “(1) If a medical officer is of the opinion that a person is or may be suffering from a mental impairment or serious mental illness, the



medical officer may make an order for protective custody in the prescribed form, directing a constable to —

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

(1A) The medical doctor who examines a person under subsection (1) shall, after conducting the examination, complete the prescribed form to be used in the assessment of the person.

(1B) The medical officer under subsection (1) may, after consultation with the medical doctor who examined the person under subsection (1), make an emergency detention order in the prescribed form, directing the detention of that person in a hospital or other place of safety for up to seventy-two hours.

(1C) If the medical officer makes an emergency detention order under subsection (1B), the medical officer shall —

- (a) in writing, as soon as practicable thereafter, inform the Mental Health Commission of the detention of the person;
- (b) supply the Mental Health Commission with a copy of the prescribed form under subsection (1A); and
- (c) otherwise comply with any regulations that may be made under this Act in that regard.”; and

(b) by repealing subsection (7).

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

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

“Apprehension of a person suspected to be a danger

7. (1) Where it appears to a constable that a person —

- (a) is, by reason of mental impairment or serious mental illness, an immediate danger, or is likely to become a danger, to himself or other persons; or
- (b) is threatening, attempting or preparing to inflict self-harm,

the constable shall take the person into protective custody and, with all reasonable despatch but no later than twelve hours after the person

is taken into protective custody, bring the person before a medical doctor employed by the Government to be examined.

- (2) A constable shall, upon taking the person to a medical doctor in accordance with subsection (1), immediately file the prescribed form with the receiving medical doctor, and shall indicate in the prescribed form the grounds for the constable's actions under subsection (1).
- (3) The medical doctor referred to in subsection (1) shall, after conducting the examination —
 - (a) complete the prescribed form to be used in the assessment of the patient; and
 - (b) consult a medical officer.
- (4) If the medical officer referred to in subsection (3)(b) considers that the patient should be further detained, the medical officer shall make an emergency detention order in the prescribed form, directing that the patient be detained in a hospital or other place of safety able to receive and care for that patient.”.

Amendment of section 9 – treatment order

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

Amendment of section 12- assisted outpatient treatment order

7. The principal Act is amended in section 12 by repealing subsections (5) and (6) and substituting the following subsections —
 - “(5) If the patient violates an assisted outpatient treatment order, the responsible medical officer may make an order for protective custody in the prescribed form, directing a constable to —
 - (a) take the patient into protective custody; and
 - (b) with all reasonable despatch, but no later than twelve hours after the person is taken into protective custody, bring the patient before a medical doctor employed by the Government or a medical officer to be examined.
 - (6) The medical doctor employed by the Government or medical officer who examines the patient under subsection (5) shall, after conducting the examination, complete the prescribed form to be used in the assessment of the patient.
 - (6A) Where a medical officer conducts the examination under subsection (5), if the medical officer considers that the patient should be further detained, the medical officer shall make an emergency detention



order in the prescribed form, directing that the patient be detained in a hospital or other place of safety able to receive and care for that patient.

- (6B) Where a medical doctor employed by the Government conducts the examination under subsection (5) —
- (a) the medical doctor employed by the Government shall consult a medical officer; and
 - (b) if the medical officer under paragraph (a) considers that the patient should be further detained, the medical officer shall make an emergency detention order in the prescribed form, directing that the patient be detained in a hospital or other place of safety able to receive and care for that patient .”.

Repeal and substitution of section 16 – restrictions on access to post and electronic networks

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

“Restrictions on access to post and electronic networks

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

