

Department of Health & Family Welfare
DRAFT MENTAL HEALTH CARE BILL (01.10.2012)

	person's treatment at the mental health establishment;	
	(2) Physical restraint or seclusion shall not be used for a period longer than it is absolutely necessary to prevent the immediate risk of significant harm.	
	(3) The medical officer or psychiatrist in charge of the mental health establishment shall be responsible for ensuring that the method, nature of restraint or seclusion, justification for its imposition and the duration of the restraint or seclusion are immediately recorded in the person's medical notes.	
	(4) The restraint or seclusion shall not be used as a form of punishment or deterrent in any circumstance and the mental health establishment shall not use restraint or seclusion merely on the ground of shortage of staff in such establishment.	
	(5) The nominated representative of the person with mental illness shall be informed about every instance of seclusion or restraint within a period of twenty-four hours.	
	(6) A person who is placed under restraint or seclusion shall be kept in a place where he can cause no harm to himself or others and under regular ongoing supervision of the medical personnel at the mental health establishment.	
	(7) The mental health establishment shall include all instances of restraint and seclusion, in the report to be sent to the concerned Board on a monthly basis.	
	(8) The Commission may make regulations for the purpose of carrying out the provisions of this section.	
	(9) The Board may order a mental health establishment to desist from applying restraint and seclusion if the Board is of the opinion that the mental health establishment is persistently and wilfully ignoring the provisions of this section.	
	107. (1) Whenever a person undergoing treatment for mental illness in a mental health establishment is to be discharged into the community or to a different mental health establishment or where a new psychiatrist is to take responsibility of the person's care and treatment, the psychiatrist who has been responsible for the person's care and treatment shall consult with the person with mental illness, the nominated representative, the family member or care-giver with whom the person with mental illness shall reside on discharge from the hospital, the psychiatrist expected to be responsible for the person's care and treatment in the future, and such other persons as may be appropriate, as to what treatment or	Discharge planning.

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	<p>services would be appropriate for the person.</p> <p>(2) The psychiatrist responsible for the person's care shall in consultation with the persons referred to in sub-section (1) ensure that a plan is developed as to how treatment or services shall be provided to the person with mental illness.</p> <p>(3) The discharge planning under this section shall apply to all discharges from a mental health establishment.</p>	
	<p>108. (1) The professionals conducting research shall obtain free and informed consent from all persons with mental illness for participation in any research involving interviewing the person or psychological, physical, chemical or medicinal interventions.</p>	<p>Research.</p>
	<p>(2) In case of research involving any psychological, physical, chemical or medicinal interventions to be conducted on person who is unable to give free and informed consent but does not resist participation in such research, permission to conduct such research shall be obtained from concerned State Authority.</p> <p>(3) The State Authority may allow the research to proceed based on informed consent being obtained from the nominated representative of persons with mental illness, if the State Authority is satisfied that—</p>	
	<p>(a) the proposed research cannot be performed on persons who are capable of giving free and informed consent;</p>	
	<p>(b) the proposed research is necessary to promote the health of the population represented by the person;</p>	
	<p>(c) the purpose of the proposed research is to obtain knowledge relevant to the particular health needs of persons with mental illness;</p>	
	<p>(d) a full disclosure of the interests of persons and organisations conducting the proposed research is made and there is no conflict of interest involved; and</p>	
	<p>(e) the proposed research follows all the national and international guidelines and regulations concerning the conduct of such research and ethical approval has been obtained from the institutional ethics committee where such research is to be conducted.</p>	
	<p>(4) The provisions of this section shall not restrict research based study of the case notes of a person who is unable to give informed consent, so long as the anonymity of the persons is</p>	

	secured.	
	CHAPTER XIII RESPONSIBILITIES OF OTHER AGENCIES	
	109. (1) Every officer in charge of a police station shall have a duty—	Duties of Police officers in respect of persons with mental illness.
	(a) to take under protection any person found wandering at large within the limits of the police station whom the officer has reason to believe has mental illness and is incapable of taking care of himself; or	
	(b) to take under protection any person within the limits of the police station whom the officer has reason to believe to be a risk to himself or others by reason of mental illness.	
	(2) The officer in charge of a police station shall inform the person who has been taken into protection under sub-section (1), the grounds for taking him into such protection or his nominated representative, if in the opinion of the officer such person has difficulty in understanding those grounds.	
	<p>(3) Every person taken into protection under sub-section (1) shall be taken to the nearest public health establishment as soon as possible but not later than twenty-four hours from the time of being taken into protection, for assessment of the person's health care needs.</p> <p>(4) No person taken into protection under sub-section (1) shall be detained in the police lock up or prison in any circumstances.</p> <p>(5) The medical officer in charge of the public health establishment shall be responsible for arranging the assessment of the person and the needs of the person with mental illness will be addressed as per other provisions of this Act as applicable in the particular circumstances.</p> <p>(6) The medical officer or psychiatrist in charge of the public mental health establishment if on assessment of the person finds that such person does not have a mental illness of a nature or degree requiring admission to the mental health establishment, he shall inform his assessment to the police officer who had taken the person into protection and the police officer shall take the person to the person's residence or in case of homeless persons, to a Government establishment for homeless persons.</p> <p>(7) In case of a person with mental illness who is homeless or found wandering in the community, a First Information Report of a</p>	

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	missing person shall be lodged at the concerned police station and the station house officer shall have a duty to trace the family of such person and inform the family about the whereabouts of the person.	
	110. (1) Every officer in charge of a police station, who has reason to believe that any person residing within the limits of the police station has a mental illness and is being ill-treated or neglected, shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the person with mental illness resides.	Report to magistrate of a person with mental illness in a private residence who is ill treated or neglected.
	(2) Any person who has reason to believe that a person has mental illness and is being ill-treated or neglected by any person having responsibility for care of such person, shall report the fact to police officer in charge of the police station within whose jurisdiction the person with mental illness resides.	
	(3) If the Magistrate has reason to believe based on the report of a police officer or otherwise, that any person with mental illness within the local limits of his jurisdiction is being ill-treated or neglected, the Magistrate may cause the person with mental illness to be produced before him and pass an order in accordance with the provisions of section 111.	
	111. (1) When any person with mental illness or who may have a mental illness appears or is brought before a Magistrate, the Magistrate may, order in writing—	Conveying or admitting a person with mental illness to a mental health establishment by a Magistrate.
	(a) that the person is conveyed to a public mental health establishment for assessment and treatment, if necessary and the mental health establishment shall deal with such person in accordance with the provisions of the Act; or	
	(b) authorise the admission of the person with mental illness in a mental health establishment for such period not exceeding ten days to enable the medical officer or psychiatrist in charge of the mental health establishment to carry out an assessment of the person and to plan for necessary treatment, if any.	
	(2) On completion of the period of assessment referred to in sub-section (1), the medical officer or psychiatrist in charge of the mental health establishment shall submit a report to the Magistrate and the person shall be dealt with in accordance with the provisions of this Act.	
3 of 1900. 45 of 1950.	112. (1) An order under section 30 of the Prisoners Act, 1900 or	Prisoners with mental illness.

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<p>46 of 1950. 62 of 1957. 2 of 1974.</p>	<p>under section 144 of the Air Force Act, 1950, or under section 145 of the Army Act, 1950, or under section 143 or section 144 of the Navy Act, 1957, or under section 330 or section 335 of the Code of Criminal Procedure 1973, directing the admission of a prisoner with mental illness into any suitable mental health establishment, shall be sufficient authority for the admission of such person in such establishment to which such person may be lawfully transferred for care and treatment therein.</p>	
	<p>(2) The medical officer of a prison or jail shall send a quarterly report to the concerned Board certifying therein that there are no prisoners with mental illness in the prison or jail.</p> <p>(3) The Board may visit the prison or jail and ask the medical officer as to why the prisoner with mental illness, if any, has been kept in the prison or jail and not transferred for treatment to a mental health establishment.</p>	
	<p>(4) The medical officer in charge of a mental health establishment wherein any person referred to in sub-section (1) is detained, shall once in every six months, make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.</p>	
	<p>113. If it appears to the person in charge of a state run custodial institution (including beggars homes, orphanages, women's protection homes and children homes) that any resident of the institution has, or is likely to have, a mental illness, then, he shall take such resident of the institution to the nearest mental health establishment run or funded by the appropriate Government for assessment and treatment, as necessary.</p>	<p>Persons in custodial institutions.</p>
	<p>114. (1) Notwithstanding anything contained in any other law for the time being in force, a person's current or past admission to a mental health establishment or a person's current or past treatment for mental illness shall not by itself, without prejudice to the provisions of any law for the time being force or custom or usage governing personnel laws of such person, be a ground for divorce.</p>	<p>Question of mental illness in judicial process.</p>
	<p>(2) If during any judicial process before any competent court, proof of mental illness is produced and is challenged by the other party, the court shall refer the same for further scrutiny to the concerned Board and the Board shall, after examination of the person alleged to have a mental illness, either by itself or through a committee of experts, submit its opinion to the court.</p>	
	<p>CHAPTER XIV</p>	

RESTRICTION TO DISCHARGE FUNCTIONS BY PROFESSIONALS NOT COVERED BY PROFESSION		
	115. No mental health professional or medical practitioner shall discharge any duty or perform any function not authorised by this Act or specify or recommend any medicine or treatment not authorised by the field of his profession.	Restriction to discharge functions by professionals not covered by profession.
CHAPTER IV OFFENCES AND PENALTIES		
	116. (1) Whoever carries on a mental health establishment without registration shall be liable to a penalty which shall be not less than five thousand rupees but which may extend to fifty thousand rupees for first contravention or a penalty which shall not be less than fifty thousand rupees but which may extend to two lakh rupees for a second contravention or a penalty which shall not be less than two lakh rupees but which may extend to five lakh rupees for every subsequent contravention.	Penalties for establishing or maintaining a mental health establishment in contravention of provisions of this Act.
	(2) Whoever knowingly serves in a mental health establishment which is not registered under this Act, shall be liable to a penalty which may extend to twenty five thousand rupees.	
	(3) Save as otherwise provided in this Act, the penalty under this section shall be adjudicated by the State Authority.	
	(4) Whoever fails to pay the amount of penalty, the State Authority may forward the order to the Collector of the district in which such person owns any property or resides or carries on his business or profession or where the mental health establishment is situated, and the Collector shall recover from such persons or mental health establishment the amount specified thereunder, as if it were an arrear of land revenue.	
	(5) All sums realised by way of penalties under this Chapter shall be credited to the Consolidated Fund of India.	
	117. Any person who contravenes any of the provisions of this Act, or of any rule or regulation made thereunder shall for first contravention be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to ten thousand rupees or with both, and for any subsequent contravention with imprisonment for a term which may extend to two years or with a fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.	Punishment for contravention of provisions of the Act or rules or regulations made thereunder.
	118. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was	Offences by companies.

	committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:	
	Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.	
	(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.	
	<i>Explanation.</i> —For the purposes of this section,—	
	(a) “company” means any body corporate and includes a firm or other association of individuals; and	
	(b) “director”, in relation to a firm, means a partner in the firm.	
	CHAPTER XVI MISCELLANEOUS	
	119. (1) The Central Government may, by a general or special order, call upon the Authority or the Commission or the Board to furnish, periodically or as and when required any information concerning the activities carried on by the Authority or the Commission or the Board, as the case may be, in such form as may be prescribed, to enable that Government, to carry out the purposes of this Act.	Power to call for information.
	(2) The State Government may, by a general or special order, call upon the Authority to furnish, periodically or as and when required any information concerning the activities carried on by the Authority in such form as may be prescribed, to enable that Government, to carry out the purposes of this Act.	
	120. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:	Power of Central Government to issue directions.
	Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given	