

**CHAPTER 63:02**  
**MENTAL DISORDERS**  
ARRANGEMENT OF SECTIONS

SECTION

PART I  
*Preliminary*

1. Short title
2. Interpretation
3. Classification of mentally disordered and defective persons
4. Authority for detention and application of the Act

PART II  
*Reception Orders*

5. Application for reception order
6. Procedure on receipt of application by District Commissioner
7. District Commissioner may order apprehension in certain cases
8. Proceedings may be held in private
9. Issue of reception order
10. Temporary treatment
11. Duty of the District Commissioner in relation to property
12. Duty of police officer to apply for order in certain cases
13. Directions or orders in lieu of reception orders

PART III  
*Effect of a Reception Order*

14. Period of detention
15. Order endorsed under section 10
16. Other reception orders

PART IV  
*Urgent Cases*

17. Urgent application
18. Administrative officer may order apprehension in certain cases
19. Apprehension without warrant in certain cases
20. Duty of person receiving a patient in urgent cases
21. Procedure on receipt by District Commissioner of notification

PART V  
*Provisions as to Medical Certificates Given under Parts II,  
III and IV*

22. Particulars to be contained in medical certificates
23. Incompetence of medical practitioner in certain cases
24. Statement of eligibility to sign to be stated in certificate

PART VI  
*Procedure after Issue of Reception Order*

25. District Commissioner to send copies of order and reports to Master
26. Duty of superintendent
27. Powers of Master on consideration of reception order and documents
28. Director may order transfer of patient

PART VII  
*Patients Residing in Private Dwelling Houses*

29. Where no remuneration is paid for maintenance and care
30. Not more than one patient to be in private dwelling
31. Visiting of patients under this Part

#### PART VIII

##### *Review and Termination of Detention*

32. Reports on patients
33. Patient, relative or friend may apply for inquiry
34. Termination of detention

#### PART IX

##### *Temporary Treatment of Voluntary Patients*

35. Minister may authorize places for temporary treatment
36. Voluntary patients
37. Notice of reception, death and departure of voluntary patients and provisions as to discharge

#### PART X

##### *Mental Health Board*

38. Constitution of Mental Health Board
39. Functions of the Board
40. Reports by the Board

#### PART XI

##### *Offences and Penalties*

41. Detaining patients except under provisions of Act
42. False statements, entries and wilful obstruction
43. Ill-treatment by nurses or other persons in charge
44. Conniving at escape of patient
45. Employment of male persons in personal custody of female patient
46. Penalties
47. Examination of patient at institution

#### PART XII

##### *General and Supplementary*

48. Act not to be taken to limit powers of court
49. Limitation of actions by patients
50. Mechanical means of restraint
51. Regulations
52. Minister may authorize removal of patients from Botswana
53. Provisions regarding patients passing through Botswana

Act 1, 1969,  
Act 5, 1971,  
S.I. 56, 1971.

**An Act to make provision for the reception, detention, treatment and protection of mentally disordered persons.**

[Date of Commencement: 23rd April, 1971]

#### **PART I**

##### ***Preliminary (ss 1-4)***

#### **1. Short title**

This Act may be cited as the Mental Disorders Act.

## 2. Interpretation

In this Act, unless the context otherwise requires-

"**child**" means any person under the apparent age of 16 years;

"**class**" means a class specified in section 3;

"**detention order**" means an order issued under section 21;

"**Director**" means Director or Deputy Director of Medical Services;

"**District Commissioner**" includes an administrative officer acting, by the authority of the District Commissioner, on his behalf;

"**institution**" means a mental hospital or other place which is prescribed as an institution or place for the reception, medical treatment and detention of persons suffering from mental disorder or defect:

Provided that no prison may be prescribed as a place for the medical treatment of persons suffering from a mental disorder or defect;

"**Master**" means the Master of the High Court of Botswana;

"**medical practitioner**" means a medical practitioner duly registered as such in Botswana;

"**mentally disordered or defective person**" means any person who in consequence of a mental disorder or disease or permanent defect of reason or mind, congenital or acquired, is incapable of managing himself or his affairs, or is in consequence of such disorder or disease or defect a danger to himself or others, or is unable to conform with the ordinary usages of the society in which he moves, or who in consequence of such disorder, disease or defect requires supervision of treatment or control, or who, if a child, appears by reason of such defect to be permanently incapable of receiving proper benefit from instruction in ordinary schools;

"**Mental Health Board**" or "**Board**" means the Mental Health Board as established under Part X;

"**patient**" means a mentally disordered or defective person or person concerning whom proceedings are considered necessary to determine whether or not he is suffering from a mental disorder or defect;

"**place of detention**" means a place prescribed for the reception and detention of persons suffering from mental disorder or defect:

Provided that no police lock-up shall be so prescribed without the concurrence of the Commissioner of Police;

"**reception order**" means an order issued under section 9;

"**superintendent**" means an officer or person in charge of an institution, prison or other place of detention and includes a medical superintendent.

## 3. Classification of mentally disordered and defective persons

For the purposes of this Act and all proceedings thereunder, mentally disordered or defective persons are divided into the following classes-

- (a) Class I: a person who is-
  - (i) of suicidal or homicidal tendency or is in any way dangerous to himself or others;  
or
  - (ii) has committed or attempted to commit any offence of a serious character;
- (b) Class II: a person who, although not falling within Class I, is unable to guard himself against common physical dangers or to look after his person and who requires skilled medical attention;
- (c) Class III: a person who, although not falling within Class I, is unable to guard himself against common physical dangers or to look after his person but who does not require skilled medical attention.

## 4. Authority for detention and application of the Act

(1) No person shall be detained in an institution or elsewhere on the grounds of being a mentally disordered or defective person except-

- (a) by virtue of the provisions of this Act; or
- (b) in accordance with the provisions of Part XI of the Criminal Procedure and Evidence Act.

(2) The provisions of this Act other than section 40(3) and section 50 shall not apply in the case of a person detained in accordance with the provisions of Part XI of the Criminal Procedure and Evidence Act.

## **PART II**

### ***Reception Orders (ss 5-13)***

#### **5. Application for reception order**

(1) To obtain a reception order for a patient, the husband or wife or other near relative of the patient, or any other person who has attained the age of 21 years, may make application to the District Commissioner.

(2) In every such application the applicant shall state-

- (a) that he believes that the person in respect of whom the application is made (hereinafter called "the patient") is mentally disordered or defective;
- (b) the grounds on which he believes that the patient is mentally disordered or defective;
- (c) the degree of consanguinity or affinity in which the applicant is related to the patient, and, if he is not the husband or wife or other near relative, the reason why the application is made by the applicant instead of by the husband or wife or near relative; and
- (d) that the applicant has, within the 14 days immediately preceding the day on which the application was signed, personally seen the patient.

(3) No such application shall be submitted or transmitted to a District Commissioner more than 14 days after the day on which it is signed.

#### **6. Procedure on receipt of application by District Commissioner**

Upon receipt of an application for a reception order the District Commissioner may, in his discretion, himself visit the patient at the patient's place of abode or elsewhere and shall, whether or not he does so, obtain from a medical practitioner within a period which should not be more than 14 days a certificate upon the prescribed form as to the mental state of the patient.

#### **7. District Commissioner may order apprehension in certain cases**

Every District Commissioner to whom an application for a reception order is made in respect of any patient may, if he thinks fit, and if the patient will not appear voluntarily, at any time before the reception order has been made, authorize any police officer to apprehend that person and bring him before-

- (a) a medical practitioner for the purpose of obtaining a certificate under section 6; and
- (b) the District Commissioner to be examined and further dealt with in accordance with law.

#### **8. Proceedings may be held in private**

All proceedings in relation to a reception order may be held in public or private at the discretion of the District Commissioner.

#### **9. Issue of reception order**

(1) If, upon consideration of the application and the certificates of the medical practitioner and after such further or other inquiry as the District Commissioner thinks necessary, he is satisfied that the patient is mentally disordered or defective and-

- (a) is not under proper care, treatment or control;
- (b) is cruelly treated or neglected by any relative or other person having the care or charge of him;
- (c) is of suicidal or homicidal tendency or is in any way dangerous to himself or others;
- (d) has committed or attempted to commit any crime or offence or has acted in a manner offensive to public decency; or

(e) if the person having the care, treatment or control of the patient consents, the District Commissioner may issue a reception order in the prescribed form authorizing the patient to be removed to, and to be received and detained in, an institution or place of detention to be named in the order.

(2) The District Commissioner shall, at the time of issuing a reception order, determine to which class the patient belongs and shall endorse such determination on the order; and, in making such determination, he shall be bound by the opinion in the matter expressed by the medical practitioner in the certificate furnished under section 6 unless, as a result of an inquiry under subsection (1), the District Commissioner is satisfied that the opinion expressed cannot safely be relied upon in the circumstances of the case.

(3) The District Commissioner shall not issue a reception order authorizing the removal of a Class III patient to, or his reception and detention in, an institution unless with the prior authority of the Director.

(4) No reception order shall be granted unless the medical practitioner, on whose certificate it is proposed to grant such order, has personally examined the patient and issued the certificate not more than 14 days before the date of the reception order.

(5) After the issue of a reception order, the patient shall be removed to the institution or place of detention as soon as possible and, pending such removal, the District Commissioner may issue such order as he thinks fit for the care, control and detention of the patient either at the patient's home or place of abode or elsewhere.

(6) If, within one month of the issue of a reception order, any statement in the application or any statements not dealing with the patient's mental condition in a certificate of a medical practitioner considered in terms of subsection (1) is found to be incorrect or deficient, the District Commissioner may permit the application or certificate to be amended, and may, in his discretion, make a corresponding amendment to the order.

#### **10. Temporary treatment**

The District Commissioner may, in issuing a reception order, endorse upon it a statement to the effect that the order is granted for the temporary treatment of the patient only.

#### **11. Duty of the District Commissioner in relation to property**

(1) Upon the issue of a reception order, the District Commissioner shall take such steps as may be necessary to safeguard the property of the patient and for that purpose he shall have, in the absence of any tutor, curator or guardian with power to manage the affairs of the patient, the powers of a *curator bonis*:

Provided that the District Commissioner shall not, under the provisions of this section, alienate any property of the patient, other than property of a perishable nature.

(2) In the event of the District Commissioner taking into his possession or placing under his control, any property of the patient (being property in excess of P10 in value), he shall report thereon to the Master within seven days thereof.

#### **12. Duty of police officer to apply for order in certain cases**

Any police officer, if he has reason to believe that any person, wandering at large, is mentally disordered or defective and-

- (a) is neglected or cruelly treated by any person having the care or charge of him;
- (b) acts in a manner offensive to public decency;
- (c) is not under safe and proper supervision, care or control; or
- (d) is dangerous to himself or others,

shall forthwith make application, or cause an application to be made, to a District Commissioner for a reception order of that person.

#### **13. Directions or orders in lieu of reception orders**

(1) Where the District Commissioner is satisfied that it is lawful to issue a reception order under the provisions of this Part, and it appears to him that any person is prepared to take care of the patient and to afford the patient such care and attention as is necessary in the

circumstances, the District Commissioner may, in lieu of making such order, by direction in writing place the patient in the care of such person, on condition that such person furnishes to the State such security or recognizances as may, in the opinion of the District Commissioner, be required to ensure that such care and attention are so afforded.

(2) Where the District Commissioner is satisfied that it is lawful to issue a reception order in respect of a Class III patient, and that there is a person able and liable under the common law or customary law (according as such person is subject in respect of responsibility to render aliment and support to such patient to the one or the other system of law) to render aliment or support to such patient, the District Commissioner, in lieu of making such order, may after hearing such person and taking such evidence as he may deem necessary, make an order committing such patient to the care of such person and directing such person to receive such patient and furnish him with food, accommodation and attention according to his needs and the ability of the person to whom the order is directed.

(3) An appeal against any order made in terms of subsection (2) may be brought by any person to whom such order is directed to the High Court which shall have power to confirm, vary or set aside such order.

(4) Whenever any person to whom an order has been directed in terms of subsection (2) and on whom such order has been served fails to receive the patient committed to his care or in any material respect fails to comply with such order or to render due care and attention to such patient, he shall be guilty of an offence and liable to a fine not exceeding P1,000 or to imprisonment for a term not exceeding six months, or to both.

### **PART III**

#### ***Effect of a Reception Order (ss 14-16)***

##### **14. Period of detention**

Subject to the provisions of sections 15 and 16, a reception order shall authorize the detention of the person named therein for a period not exceeding 30 days.

##### **15. Order endorsed under section 10**

The District Commissioner may by endorsement on a reception order endorsed under section 10, extend the period of detention for a period or periods of detention not exceeding 30 days at a time, if the medical practitioner on whose certificate the order was granted certifies that the further detention of the patient is desirable:

Provided that no person shall be detained upon an order endorsed under section 10 for a term exceeding 90 days.

##### **16. Other reception orders**

(1) The District Commissioner may by endorsement on the reception order (not being an order endorsed under section 10) extend the period of detention for a further period, not exceeding 60 days, upon the receipt within the said period of 30 days of a medical practitioner's certificate upon the prescribed form as to the mental state of the patient from a medical practitioner other than the practitioner who gave the certificate under section 6.

(2) No medical practitioner's certificate shall be treated as valid for the purposes of subsection (1) unless the medical practitioner has personally examined the patient and issued the certificates not more than 14 days before the date of the endorsement.

(3) Upon receipt of a medical practitioner's certificate furnished under subsection (1), the District Commissioner may review his determination under section 9(2), and may thereafter, subject to subsection (3) of that section, at any time during the continuance of the reception order, authorize by endorsement on the order the removal of the patient named therein to an institution.

### **PART IV**

#### ***Urgent Cases (ss 17-21)***

##### **17. Urgent application**

(1) In cases of urgency where it is expedient either for the welfare of the patient or for

the public interest that such patient should forthwith be placed under care, supervision or treatment, it shall be lawful for a person in immediate control of an institution or any hospital, prison or cell, to receive and detain such patient on the authority of an application made in terms of this section (hereinafter called "an urgent application").

(2) An urgent application shall be made in writing on the prescribed form and shall be signed by the applicant; it shall be accompanied by a medical certificate and shall state-

- (a) the grounds on which the applicant believes the patient is mentally disordered or defective;
- (b) the degree of consanguinity or affinity in which the applicant is related to the patient and, if he is not the husband or wife or near relative, the reason why the application is made by the applicant instead of by the husband or wife or near relative;
- (c) that the applicant has within the 48 hours preceding the time of application, personally seen the patient; and
- (d) that the matter is one of urgency and the reasons therefor.

(3) No person shall sign any document relating to an urgent application unless he is of full age.

(4) No person shall be received under an urgent application unless it appears from the medical certificate accompanying the application that the certifying medical practitioner has personally examined the patient not more than 48 hours before the application is made.

#### **18. Administrative officer may order apprehension in certain cases**

(1) Any administrative officer upon information on oath that a person is deemed to be mentally disordered or defective and is-

- (a) dangerous to himself or others; or
- (b) wandering at large and in immediate need of care (whether skilled or not),

may by order require a police officer to apprehend such person and bring him before the District Commissioner having jurisdiction where such person is.

(2) Any District Commissioner before whom a person is brought in accordance with the provisions of this section shall, if he deems it necessary, forthwith take action for the issue of an urgent application.

#### **19. Apprehension without warrant in certain cases**

Any police officer of or above the rank of sergeant, any headman, any tribal messenger or any member of a city, town or district council or of any township authority, who has reason to believe that a person apparently mentally disordered or defective is dangerous to himself or to others and that it is necessary for the public safety or for the welfare of such person that before proceedings are taken under this Act he should be placed under care and control, may forthwith, without warrant or order, apprehend and convey such person to an institution or any suitable hospital, prison or cell and the person in immediate control thereof may, notwithstanding the absence of warrant or order, receive and detain such person.

#### **20. Duty of person receiving a patient in urgent cases**

(1) Whenever a patient is received under the provisions of section 17, the person on whose application he has been received, and whenever a patient is received under the provisions of section 19, the person who has apprehended or conveyed the patient, shall immediately report the matter to the District Commissioner and shall at the same time or as soon as possible thereafter make application to the District Commissioner for a reception order in respect of such patient.

(2) No patient received under the provisions of section 17 or 19 shall be detained, without a reception order, for a term exceeding 14 days except upon an order in terms of section 21 by the District Commissioner.

(3) Any person who fails to report or to make application in accordance with the provisions of subsection (1) shall be guilty of an offence.

#### **21. Procedure on receipt by District Commissioner of notification**

(1) Upon receipt of notification in terms of section 20 (1), the District Commissioner may, subject to the provisions of subsection (2) hereof, order in writing the further detention of the patient for such period or periods not exceeding 14 days at any one time as may be necessary for deciding whether or not the patient is mentally disordered or defective.

(2) No order, in terms of subsection (1), shall be made which would have the effect of causing the patient to be detained without a reception order for a total period, commencing with his reception in terms of section 17 or 19, that exceeds 28 days.

(3) If on inquiry the District Commissioner refuses to issue a reception order in respect of any patient detained under the provisions of section 17 or 19, he shall forthwith give notice of his refusal to the person in charge of the place where the patient is detained; upon receipt of the notice by such person, it shall not be lawful to continue to detain the patient.

#### **PART V**

##### ***Provisions as to Medical Certificates Given under Parts II, III and IV (ss 22-24)***

#### **22. Particulars to be contained in medical certificates**

Every medical practitioner giving a certificate under Part II, III or IV shall, as far as he is able in addition to the facts indicating mental disorder or defect in the patient which were observed by him during the examination to which the certificate relates, state therein-

- (a) any further facts indicative of mental disorder or defect in the patient observed by the certifying medical practitioner on any other occasion, and the approximate date of that occasion;
- (b) any facts communicated to him by others indicative of mental disorder or defect in the patient and the names and addresses of the persons who communicated those facts;
- (c) the class to which, in his opinion, the patient properly belongs;
- (d) what, in his opinion, are the factors which caused the mental disorder or defect;
- (e) whether, in his opinion, the patient is homicidal, suicidal or in any way dangerous to himself or to others;
- (f) what treatment, if any, the patient has received in respect of his mental condition;
- (g) what is the bodily health and condition of the patient with special reference to the presence or absence of communicable disease and of recent injury;
- (h) whether, in his opinion, the patient requires skilled medical attention.

#### **23. Incompetence of medical practitioner in certain cases**

Except in the case of an urgent application as set forth in section 17(1), it shall not be competent for a District Commissioner to accept a medical certificate for the purposes of Part II, III or IV if it was signed by-

- (a) the applicant for a reception order;
- (b) any person who has any interest in any payments to be made on account of the patient;
- (c) the partner, principal or assistant of the patient;
- (d) any person related to the patient within the third degree, whether by affinity or consanguinity;
- (e) the guardian or trustee of the patient or the guardian or trustee of any person mentioned in this section.

#### **24. Statement of eligibility to sign to be stated in certificate**

Every medical certificate given under Part II, III or IV shall contain a statement that the certifying medical practitioner is not prohibited by this Act from signing the certificate and that he is a duly registered medical practitioner.

#### **PART VI**

##### ***Procedure after Issue of Reception Order (ss 25-28)***

#### **25. District Commissioner to send copies of order and reports to Master**

(1) The provisions of this section shall apply in relation to a reception order other than an order endorsed under section 10.

(2) A District Commissioner granting a reception order shall, without delay, transmit a copy thereof to the Master together with copies of the depositions, if any, and medical reports upon which he acted in granting the order and his own report and shall likewise inform the Master of any orders made in terms of section 9(5) and any endorsement made in terms of section 16(1).

(3) The District Commissioner granting any reception order shall make full inquiry as to the patient's property or estate and at the conclusion thereof transmit a report of his findings to the Master.

(4) No reception order shall be transmitted to the Master in accordance with the provisions of this section unless it is accompanied by a medical practitioner's certificate which has been obtained in accordance with the provisions of section 16(1) in addition to the medical practitioner's certificate obtained in accordance with the provisions of section 6.

#### **26. Duty of superintendent**

It shall be the duty of the superintendent of the institution or place of detention to which a patient has been admitted under the authority of a reception order, within 10 days after the patient's admission to furnish and remit to the Master a report as to the mental condition or behaviour of the patient while in detention:

Provided that in the case of a patient admitted to an institution where a certificate of a medical practitioner having the care of such patient at such institution has been furnished under the provisions of Part II, III or IV, no report shall be required under this section.

#### **27. Powers of Master on consideration of reception order and documents**

(1) The Master upon consideration of a reception order, deposition and reports may, if he deems it necessary, require further depositions, statements or reports to be furnished, and may-

- (a) if satisfied that an order for the further detention of the patient should be made, make such order, either for a definite or for an indefinite period, as he may deem necessary;
- (b) appoint a *curator bonis* for the care or custody of any property of the patient, and where it appears to the Master desirable that provision should be made for the maintenance and other necessary purposes or requirements of the patient, or any member of his family, out of any cash or available securities belonging to him in the hands of his bankers or of any other person, the Master may order such banker or other person to pay to the *curator bonis* such sums as may be deemed necessary and may give instructions as to the application thereof for the benefit of the patient or the relief of his family;
- (c) direct that the patient shall be immediately discharged if satisfactory evidence by a medical practitioner for such discharge is produced.

(2) The Master shall transmit one copy of any order made or direction given by him under subsection (1) to the person having charge of the patient, and one copy to the Director.

(3) Any order made in terms of subsection (1)(b) may be reviewed by the High Court at any time on application by the Master or any person able to show *locus standi* and may be varied, cancelled or replaced, as the court thinks fit.

#### **28. Director may order transfer of patient**

(1) At any time after a District Commissioner has issued a reception order for the detention of a mentally disordered or defective person or the Master has made a further detention order in terms of section 27, the Director may by direction under his hand authorize the removal of the patient from the place where the patient is detained to any institution to be there detained until legally discharged or transferred to some other place.

(2) The Director shall notify the Master forthwith of the giving of a direction under subsection (1).

### **PART VII**

#### ***Patients Residing in Private Dwelling Houses (ss 29-31)***

## **29. Where no remuneration is paid for maintenance and care**

(1) If any mentally disordered or defective person is residing in a private dwelling with relatives or others who receive no remuneration for his maintenance and care (whether under the provisions of section 13 or otherwise) and the mental disorder or defect has continued for a period of six months and is of such a nature as to require compulsory confinement in the dwelling or restraint or coercion of any kind and for any period, the person who has charge of the patient shall intimate such detention to the District Commissioner and shall transmit to him a certificate signed by at least one medical practitioner as to the mental and physical condition of the patient and as to the reasons, if any, which render it desirable that such person shall remain under private care.

(2) The District Commissioner shall transmit the certificate and such other documents as he may think fit, together with remarks thereon, to the Director who shall transmit them to the Master together with any remarks which the Director may have thereon.

(3) Thereupon the Master may order that such person shall continue to be detained in the said dwelling under such conditions of supervision and care as the Master may think fit, or that steps be taken by the person having charge of the patient to obtain a reception order under Part II.

(4) Where the Master makes an order under subsection (3), he may further appoint a *curator bonis* for the care or custody of any property of the patient and, where it appears to the Master desirable that provision should be made for the maintenance and other necessary purposes or requirements of the patient, or any member of his family, out of any cash or available securities belonging to him in the hands of his bankers or any other person, the Master may order such banker or other person to pay to the *curator bonis* such sums as may be deemed necessary and may give instructions as to the application thereof for the benefit of the patient or the relief of his family.

(5) An order or appointment made in terms of subsection (3) or (4) may be reviewed by the High Court at any time upon the application of the Master or any person able to show *locus standi* and may be varied, cancelled or replaced as the court thinks fit.

## **30. Not more than one patient to be in private dwelling**

No occupier or inmate of any private dwelling shall permit to reside therein, or shall have under his care or charge therein, more than one mentally disordered or defective person at the same time unless the Director gives permission for them to reside under the same roof.

## **31. Visiting of patients under this Part**

(1) Any District Commissioner may, on receipt of any report or information that any patient of whom charge is being taken under this Part is wrongly or cruelly treated or neglected in any manner, visit such patient in the private dwelling where he is detained and may make such inquiries and investigation as he may deem necessary and thereafter shall take such proceedings as he may consider necessary.

(2) The District Commissioner shall appoint a person to visit such patient in private care and such person shall visit such patient at such time as the District Commissioner may direct and shall report to the District Commissioner within seven days of each visit as to the condition of the patient and the suitability of the house in which the patient is detained.

(3) The District Commissioner may either, on receipt of a report under subsection (2) or of his own motion, require a Government Medical Officer to examine such patient in private care and report thereon to the District Commissioner and to the Director within such time as he may specify.

(4) The Director may on receiving a report under subsection (3) order such modifications of care and detention as he may think fit, or may order the patient to be transferred to an institution; such order shall be effected through the District Commissioner of the District in which the patient is detained in private care.

## **PART VIII**

### ***Review and Termination of Detention (ss 32-34)***

#### **32. Reports on patients**

(1) When a patient is detained under the Master's order for further detention the superintendent of the institution or place of detention shall transmit in the prescribed form annually a report to the Director as to the mental and physical condition of that patient; a copy of such report shall be transmitted to the Master.

(2) The Director may, if he is not satisfied with such report, call for such further information as he may require, or may himself visit and examine the patient as to his mental condition or instruct some other medical practitioner to examine the patient and report thereon.

(3) The superintendent of any institution or place of detention in which any patient is detained shall give notice forthwith-

- (a) of the death of such patient to-
  - (i) the District Commissioner,
  - (ii) the District Registrar of Births and Deaths,
  - (iii) the Director,
  - (iv) the Master, and
  - (v) in the case of a patient detained in a prison, the Commissioner of Prisons;
- (b) of the escape of such patient to-
  - (i) the District Commissioner,
  - (ii) the nearest police station,
  - (iii) the Director,
  - (iv) the Master, and
  - (v) in the case of a patient detained in a prison, the Commissioner of Prisons.

#### **33. Patient, relative or friend may apply for inquiry**

(1) Any person detained under this Act or under a Master's further detention order may apply to the High Court directly or through a *curator-ad-litem*, for an inquiry into the cause and grounds for his detention, and the court may make such order in the matter as it may deem fit.

(2) The husband, wife or any other relative or, in their absence, any friend of any person alleged to be mentally disordered, may apply directly by petition to the High Court for an inquiry into such person's mental condition, whether a reception order has been previously granted or not, and the High Court may make such order in the matter as it may deem fit.

(3) Any inquiry held under this section, if held when the patient is detained at an institution, shall, so far as in the circumstances is practicable, be held at the institution.

#### **34. Termination of detention**

(1) Where two medical practitioners have certified to the Director in such manner as may be prescribed that any person who has been detained as a mentally disordered or defective person under this Act is no longer a mentally disordered or defective person, and the Director, after making such enquiry into the matter as he may deem fit, has recommended the release from detention of such person, the Master may order such release.

(2) The Director may at any time make application to the Master for the variation or cancellation of any reception order or any endorsement thereon or of any Master's order for further detention, and the Master may, after obtaining reports as he considers desirable, make such order in the matter as he may deem fit.

(3) Any order made in terms of subsection (2) may be reviewed by the High Court at any time on the application of the Master or any person able to show *locus standi* and may be varied, cancelled or replaced as the court thinks fit.

### **PART IX**

### ***Temporary Treatment of Voluntary Patients (ss 35-37)***

#### **35. Minister may authorize places for temporary treatment**

The Minister may, by order published in the *Gazette*, authorize any hospital, nursing home or other place to receive patients for temporary treatment without a reception order; any

such authority may be granted subject to such conditions as the Minister may think proper and may be revoked by him at any time.

### **36. Voluntary patients**

(1) Any person of the age of 16 years or over who is desirous of voluntarily submitting himself to treatment for a mental disorder or defect, and who makes an application in the manner prescribed to the superintendent, may, if such superintendent thinks fit, be received and detained without a reception order as a voluntary patient in an institution or in any hospital, nursing home or other place which has been authorized by the Minister.

(2) Any person under the age of 16 years whose parent or guardian is desirous of submitting him to treatment for a mental disorder or defect may be received and detained as a voluntary patient under this section if the parent or guardian makes an application, in the manner prescribed, to the superintendent for the treatment, accompanied by a medical recommendation; but such person shall not be received on his own application.

(3) The medical recommendation referred to in subsection (2) shall-

- (a) be signed by the medical practitioner;
- (b) state the qualifications of the medical practitioner, the date or dates on which he examined the person, and that the said person is likely to benefit by being received and treated for mental illness under this section.

(4) Any person received as a voluntary patient under this section may leave the institution or other place if he is of the age of 16 years or over upon giving to the superintendent one week's notice in writing of his intention to do so, or if he is a person under the age of 16 years, upon such notice being given by his parent or guardian; but the superintendent of such institution or other place may at any time permit the patient to leave before the expiration of the said period of one week.

(5) For the purposes of this section, the expression "guardian", in relation to a person under the age of 16 years, includes any person having charge of such person.

### **37. Notice of reception, death and departure of voluntary patients and provisions as to discharge**

(1) The superintendent of the institution or other place into which a person has been received as a voluntary patient under this Part shall, before the expiration of the second day after the day on which he was so received, send to the Director notice of such reception.

(2) If the person received as aforesaid dies in, or departs from, the institution, hospital or other place where he was residing, the person in charge shall, before the expiration of the second day after the day of death or departure, send to the Director notice of the fact.

(3) If any person who has been received as aforesaid becomes at any time by reason of mental disease incapable of expressing himself as willing or unwilling to continue to receive treatment, he shall not thereafter be detained as a voluntary patient for a longer period than 28 days and shall, if he has not been previously discharged, be discharged on the expiration of 28 days from the date on which he became incapable of so expressing himself unless in the meantime he has again become capable of so expressing himself.

(4) If a person who is under the age of 16 years and who has been received and treated as aforesaid ceases to have any parent or guardian, or if his parent or guardian is incapable of performing, or refuses or persistently neglects to perform his duty as such, the superintendent shall send to the Director a report as to the circumstances of the case and the mental and physical conditions of the patient, and the Director shall forthwith advise the Minister who shall give such directions with respect to the case as he may think fit.

## **PART X**

### **Mental Health Board (ss 38-40)**

### **38. Constitution of Mental Health Board**

(1) The Minister may, by order published in the *Gazette*, establish a board, to be styled the "Mental Health Board", and shall appoint not less than three members thereto.

- (2) Of the members so appointed, at least one shall be a medical practitioner.
- (3) The Minister shall designate one member of the Board as the chairman thereof.
- (4) A member of the Board shall hold office during the Minister's pleasure.
- (5) Any member of the Board who is not a public officer shall be entitled to travelling and subsistence expenses when performing the duties of a member of the Board at the prescribed rates.

#### **39. Functions of the Board**

(1) The Board shall visit each institution where persons are detained under this Act at least once in every six months and on each visit shall give personal observation to every patient, and shall inspect every ward, the kitchens and the places where patients are ordinarily employed.

(2) The Board may visit any place of detention where persons are detained under this Act.

(3) The Board shall investigate every reasonable complaint made to it by a patient.

#### **40. Reports by the Board**

(1) The Board shall, from time to time or when called upon by the Minister, make to the Director such suggestions and observations as it deems desirable regarding the welfare of patients in any institution or other place of detention, and shall in all cases report to the Director the result of any visit or inspection made by it.

(2) The Board may, if required to do so by the Director, advise the Director as to any matter raised in a report submitted under section 32(1).

(3) The Board may, on the direction of the President, inquire into the case of any person detained under the powers of Part XI of the Criminal Procedure and Evidence Act and report thereon in such manner as the President may direct.

### **PART XI**

#### ***Offences and Penalties (ss 41-47)***

#### **41. Detaining patients except under provisions of Act**

Every person who, otherwise than in accordance with the provisions of this Act or of any law relating to the confinement of accused persons considered to be of unsound mind or of persons found guilty but insane, receives or detains a patient is guilty of an offence.

#### **42. False statements, entries and wilful obstruction**

Every person shall be guilty of an offence who-

- (a) makes any wilful mis-statement of any material fact in any petition, application, statement of particulars, report or reception order under this Act;
- (b) makes any wilful mis-statement of any material fact in any medical certificate, recommendation or other certificate or in any statement or report of bodily or mental condition under this Act;
- (c) knowingly makes in any book, statement or return any false entry as to any matter in regard to which he is by this Act or by any regulations made under section 51 required to make an entry;
- (d) wilfully obstructs any person specially or generally authorized under this Act or by the Minister or the Director or under any order of court in the exercise of any of the powers conferred by this Act or any regulations made under section 51 in the exercise of such authority.

#### **43. Ill-treatment by nurses or other persons in charge**

Any officer, nurse, attendant, servant or other person employed in any institution, place of detention or other place, or any person having the care or charge of a patient, whether by reason of any contract or any tie of relationship or marriage or otherwise, who ill-treats or wilfully neglects any patient shall be guilty of an offence.

#### **44. Conniving at escape of patient**

Any person who wilfully assists or permits or connives at the escape or attempted

escape of any patient who has been detained under the provisions of this Act, or who secretes or harbours such a patient who has escaped, shall be guilty of an offence.

**45. Employment of male persons in personal custody of female patient**

(1) Subject to the provisions of subsection (2), it shall not be lawful to employ any male person in any institution or place of detention to exercise the personal custody or restraint of any female patient, and any person employing a male person contrary to this section shall be guilty of an offence.

(2) This section shall not prohibit or impose a penalty on the employment of male persons on such occasions of urgency as may, in the opinion of the superintendent of the institution or place of detention, render such employment necessary.

**46. Penalties**

(1) Any person convicted of an offence under section 41 or 42 shall be liable to a fine not exceeding P500 or to imprisonment for a term not exceeding one year, or to both.

(2) Any person convicted of an offence under section 20, 43, 44 or 45 shall be liable to a fine not exceeding P250 or to imprisonment for a term not exceeding six months, or to both.

**47. Examination of patient at institution**

Where it is necessary for a patient who is detained to be examined in connection with a prosecution under this or any other law, such examination shall, where possible, be held at the institution or other place where the patient is detained.

**PART XII**

***General and Supplementary (ss 48-53)***

**48. Act not to be taken to limit powers of court**

Nothing contained in this Act shall be construed as limiting or abridging the power which the court possesses by law in regard to inquiring into a person's mental capacity, to declaring persons to be mentally disordered or defective or as to the appointment of curators to the person or property of any patient, whether a reception order has been issued or not.

**49. Limitation of actions by patients**

(1) Where a person has done anything in pursuance or in intended pursuance of any of the provisions of this Act, he shall not be liable in any civil proceedings, whether on the ground of want of jurisdiction or on any other ground, unless he has acted in bad faith or without reasonable care.

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

(3) No such proceedings shall be brought against any such person for any such act in any court without the leave of the High Court, and such leave shall not be given unless the High Court is satisfied that there are substantial grounds for the contention that the person against whom it is sought to bring the proceedings has acted in bad faith or without reasonable care.

(4) Notice of any application under subsection (3) shall be given to the person against whom it is sought to bring the proceedings and that person shall be entitled to be heard in respect of the application.

(5) No such proceedings shall be commenced after the expiry of six months from the act complained of or, in the case of the continuance of injury or damage, after the expiry of six months from the cessation thereof:

Provided that in estimating the said period of six months no account shall be taken of any time or times during which the person alleged to be injured was under detention, lawfully or unlawfully, as a mentally disordered or defective person, or was ignorant of the facts which constitute the cause of the action.

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

(7) No proceedings shall be taken against any person on the ground merely that any mentally disordered or defective person was certified or detained as belonging to any one class

instead of another class.

#### **50. Mechanical means of restraint**

(1) No person shall apply to any person who is detained under this Act or under the powers of Part XI of the Criminal Procedure and Evidence Act any mechanical means of bodily restraint other than such mechanical means as the Minister may approve.

(2) Mechanical means of bodily restraint shall only be so applied if the restraint is necessary for the purposes of surgical or medical treatment, or to prevent the person restrained from injuring himself or others.

(3) No person detained in an institution shall be kept in seclusion, except upon the order of the superintendent thereof.

(4) In every case in which mechanical means of restraint or seclusion are applied, the superintendent of the institution or place of detention shall keep, from day to day, a register in which he shall describe the mechanical means or seclusion employed and state the reason why such means were necessary, and the period for which they were applied.

(5) The register kept under subsection (4) may be inspected at any time by the Director or by the Mental Health Board.

(6) For the purposes of this section, a person shall be deemed to be kept in seclusion if at any time during the period commencing one hour after the day staff come on duty and ending at 5 p.m., he is isolated in a room the door of which is fastened or held so that he is unable to leave the room at will, but not if he is isolated in a room in which the lower half of the door is so fastened or held but the upper half left open.

#### **51. Regulations**

(1) The Minister may make regulations-

- (a) prescribing anything which under this Act is to, or may, be prescribed;
- (b) prescribing the manner in which patients may be transferred from one place of detention to another;
- (c) prescribing what books and records shall be kept in institutions and what entries shall be made therein, and by whom and when;
- (d) prescribing the fees and charges to be imposed in respect of patients in institutions;
- (e) prescribing forms to be used for the purpose of this Act;
- (f) regulating the unpaid employment for therapeutic purposes of patients in institutions, and providing for the disposal of any proceeds of such employment;
- (g) regulating the manner in which any institution or any place of detention other than a prison, shall be conducted;
- (h) generally for the better carrying out of the provisions of this Act.

(2) Any person who-

- (a) transfers a patient or knowingly causes a patient to be transferred from one place of detention to another, except in the manner prescribed;
- (b) fails to keep the books and records which it is prescribed shall be kept in institutions and which he is required by regulation to keep;
- (c) fails to make the prescribed entries in such books or records when required to do so by regulation;
- (d) employs a patient or knowingly causes a patient to be employed in an institution in contravention of a regulation under subsection (1)(f); or
- (e) conducts or carries on any institution or place of detention, either personally or through others, or who, having control or authority over any such institution or place of detention, knowingly permits it to be conducted or carried on in contravention of any regulation made under subsection (2)(g),

is guilty of an offence and shall be liable to a fine not exceeding P100; and, if the contravention in respect of which he was so convicted is continued after conviction, he shall be guilty of a further offence and liable in respect thereof to a fine not exceeding P10 for each day on which

the contravention was continued.

**52. Minister may authorize removal of patients from Botswana**

(1) If the Minister is satisfied-

- (a) that any person declared by the High Court to be mentally disordered or defective should be removed from Botswana to another country; and
- (b) that his removal is likely to be for his benefit; and
- (c) that proper arrangements have been made for such removal and for his subsequent care and treatment,

he may, by warrant, in the prescribed form, direct that such person be delivered to the person named in the warrant for the purpose of removal from Botswana to the country named in such warrant.

(2) A warrant under this section shall authorize the removal of the patient named in such warrant from Botswana.

**53. Provisions regarding patients passing through Botswana**

(1) Whenever any person-

- (a) has been declared to be mentally disordered or defective in any country other than Botswana; and
- (b) has been removed from such country under warrant or order for the purpose of being taken to a country other than Botswana for care and treatment; and
- (c) in the course of such removal enters and passes through Botswana in custody,

he shall, on such entry into Botswana and throughout the period of his passage through Botswana in custody, be deemed to be, by reason of such warrant or order, in lawful custody.

(2) The warrant or order referred to in subsection (1)(b) hereof means a document which purports to have been issued by a competent authority of the country from which the person named in the document is to be removed, and purports also to authorize his removal to a specified country, access to which is ordinarily or conveniently obtained by passage through Botswana.

(3) In the event of any question arising as to whether the warrant or order was issued by a competent authority or whether it authorizes the removal as aforesaid or is otherwise in order, the certificate of the Minister in this respect shall be accepted in all courts and places as conclusive of the matter.