

THE MENTAL DISORDERS (AMENDMENT) ACT, 1971

No. 5



of 1971.

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AN ACT TO AMEND THE MENTAL DISORDERS ACT, 1969, IN MISCELLANEOUS RESPECTS

Date of Assent: 15. 4. 1971.

Date of Commencement: 23. 4. 1971.

ENACTED by the Parliament of Botswana.

Short title

1. This Act may be cited as the Mental Disorders (Amendment) Act, 1971.

Amendment of section 2 of Act No. 1 of 1969

2. Section 2 of the Mental Disorders Act, 1969 (hereinafter referred to as the principal law) is amended —

(a) by the insertion immediately after the definition of “class” of the following definition —

““detention order” means order issued under section 21;”;

(b) by the addition to the definition of “Institution” of the following proviso —

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

(c) by the addition to the definition of “place of detention” of the following proviso —

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

Amendment of section 6 of Act No. 1 of 1969

3. Section 6 of the principal law is amended by the insertion immediately after “practitioner” of —

“within a period which should not be more than 14 days.”

Amendment of section 7 of Act No. 1 of 1969

4. Section 7 of the principal law is amended by the deletion of “policeman” and the substitution of “police officer”.

Amendment of section 9 of Act No. 1 of 1969

5. Section 9 of the principal law is amended —

(a) in subsection (4) by the insertion immediately after “whose certificate” of “it”;

(b) in subsection (5) by the insertion immediately after “to the” of “institution or”.

Amendment of section 12 of Act No. 1 of 1969

6. Section 12 of the principal law is amended by the insertion immediately after "disordered" of "or".

Amendment of section 13 of Act No. 1 of 1969

7. Section 13 of the principal law is amended —

- (a) by the deletion of the heading and the substitution therefor of "Directions or Orders in lieu of Reception Orders";
- (b) by the addition of the following subsections, the present section becoming subsection (1) —

"(2) Where the District Commissioner is satisfied that he might lawfully 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 on conviction to a fine of R1,000 or, in default of payment, to imprisonment for six months or to both such fine and such imprisonment."

Amendment of section 17 of Act No. 1 of 1969

8. Section 17 of the principal law is amended in subsection (1) by the deletion of "charge" and the substitution of "immediate control".

Substitution of section 19 of Act No. 1 of 1969

9. Section 19 of the principal law is deleted and there is substituted therefor —

"Apprehension without Warrant in certain cases

19. Any police officer of or above the rank of sergeant, any headman, any tribal messenger or any member of a 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."

Amendment of section 20 of Act No. 1 of 1969

10. Section 20 of the principal law is amended —

(a) by the deletion of subsection (1) and the substitution therefor of —

"(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.";

(b) by the addition of the following subsection —

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

Amendment of section 22 of Act No. 1 of 1969

11. Section 22 of the principal law is amended in paragraph (a) by the deletion of "acts" and the substitution therefor of "facts".

Amendment of section 24 of Act No. 1 of 1969

12. Section 24 of the principal law is amended by the insertion immediately after "he is" of "a".

Amendment of section 25 of Act No. 1 of 1969

13. Section 25 of the principal law is amended in subsection (3) by the deletion of "Registrar" and substitution of "Master".

Amendment of section 26 of Act No. 1 of 1969

14. Section 26 of the principal law is amended by the insertion after "mental condition" of "or behaviour".

Amendment of section 27 of Act No. 1 of 1969

15. Section 27 of the principal law is amended in subsection (1) by the deletion in paragraph (b) of "of the property".

Amendment of section 28 of Act No. 1 of 1969

16. Section 28 of the principal law is amended in subsection (1) —

- (a) by the insertion immediately after “issued” of “a”;
- (b) by the deletion of “other” and “or place of detention”.

Amendment of section 32 of Act No. 1 of 1969

17. Section 32 of the principal law is amended by the deletion of subsection (3) and the substitution therefor of —

“(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 Director 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 Director of Prisons.

Amendment of section 34 of Act No. 1 of 1969

18. Section 34 of the principal law is amended —

(a) in subsection (1) by the deletion of —

“the Director may, after making such enquiry in the matter as he may think fit, order the release from detention of such person.”

and the substitution therefor of —

“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.”;

(b) in subsection (2) by the deletion of "making" and the substitution therefor of "obtaining".

Amendment of section 36 of Act No. 1 of 1969

19. Section 36 of the principal law is amended in subsection (2) —

- (a) by the deletion, immediately after "disorder" of "of" and the substitution therefor of "or";
- (b) by the insertion immediately after "detained as" of "a".

Amendment of section 39 of Act No. 1 of 1969

20. Section 39 of the principal law is amended by the insertion of the following subsection, the present subsection (2) becoming subsection (3) —

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

Amendment of section 40 of Act No. 1 of 1969

21. Section 40 of the principal law is amended in subsection (1) by the deletion of "the institution" and the substitution therefor of "any institution".

Amendment of section 41 of Act No. 1 of 1969

22. Section 41 of the principal law is amended by the insertion immediately after "Act" of "or of any law relating to the confinement of accused persons considered to be of unsound mind or of persons found guilty but insane".

Amendment of section 46 of Act No. 1 of 1969

23. Section 46 of the principal law is amended in subsection (2) by the insertion immediately after "section" of "20,".

Amendment of section 50 of Act No. 1 of 1969

24. Section 50 of the principal law is amended in subsection (6) by the deletion of "between" and the substitution of "during".

Amendment of section 51 of Act No. 1 of 1969

25. Section 51 of the principal law is amended in paragraph (e) of subsection (2) by the deletion of "(f)" and the substitution of "(g)".

Passed by the National Assembly this day, the 15th March, 1971.

G. I. MATENGE
Clerk to the National Assembly.