



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 39

An Act respecting the protection of mentally ill persons and amending various legislative provisions

Introduction

**Introduced by
Mr Jean Rochon
Minister of Health and Social Services**

**Québec Official Publisher
1996**

EXPLANATORY NOTES

This bill introduces a reform of the Mental Patients Protection Act.

The rules on psychiatric examination contained in the Civil Code of Québec are completed by specifying which health care professionals are authorized to carry out psychiatric examinations. The various mandatory elements of a psychiatric examination report are listed, especially for reports drawn up following a psychiatric examination ordered under the Code of Penal Procedure.

Within the scope of the rules set out in the Civil Code of Québec, the bill defines the rules applicable in matters concerning the confinement of mentally ill persons. The type of institution to which such persons may be directed, and the procedure to be followed when a person is placed under confinement following a court order, are defined. In addition, the bill provides for the periodical examination of persons under confinement, establishes the conditions on which they may be transferred to another health care institution, and defines cases in which temporary leave of absence may be granted by the attending physician.

The bill also provides for temporary confinement and, in cases of emergency, for exceptional measures, such as the confinement of persons against their will and without court authorization where their health or safety, or that of other persons, is in imminent danger.

The bill contains various rules of procedure to ensure that persons under confinement, and their close relatives, are kept fully informed of their rights and the recourses available to them. The current provision allowing the Commission des affaires sociales to revise any decision made regarding a mentally ill person, upon application or on its own initiative, is maintained.

A new provision is introduced to require institutions to comply with a number of administrative rules whenever they are obliged to use containment measures in respect of a mentally ill person, whether under confinement or not.

Lastly, the bill includes consequential amendments to related legislation.

LEGISLATION AMENDED BY THIS BILL:

- Code of Civil Procedure (R.S.Q., chapter C-25);
- Code of Penal Procedure (R.S.Q., chapter C-25.1);
- Act respecting the Commission des affaires sociales (R.S.Q., chapter C-34);
- Public Curator Act (R.S.Q., chapter C-81);
- Notarial Act (R.S.Q., chapter N-2);
- Agricultural Products, Marine Products and Food Act (R.S.Q., chapter P-29);
- Act respecting the determination of the causes and circumstances of death (R.S.Q., chapter R-0.2);
- Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5);
- Marine Products Processing Act (R.S.Q., chapter T-11.01).

LEGISLATION REPLACED BY THIS BILL:

- Mental Patients Protection Act (R.S.Q., chapter P-41).

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

PRELIMINARY PROVISION

1. The provisions of Chapters I, II and III of this Act complement the provisions of the Civil Code of Québec concerning the confinement in a health and social services institution of persons whose mental state presents a danger to themselves or to others, and the provisions concerning the psychiatric examination carried out to determine the necessity for such confinement.

The provisions of this Act, and in particular the provisions of Chapter IV, are to be applied in light of the rules provided by law with respect to integrity of the person.

CHAPTER I

PSYCHIATRIC EXAMINATION

2. The psychiatric examination to which a person is required to submit by law or by a court decision must be carried out by a psychiatrist. However, if it is not possible to obtain the services of a psychiatrist in due time, the examination may be carried out by any other physician.

The person who carries out the examination may not be the spouse or a close relative of the person undergoing the examination or the person who requested the examination.

3. The report made following a psychiatric examination must be signed by the examining physician. He must, in particular, state in the report

- (1) that he himself has examined the person;
- (2) the date of the examination;
- (3) his diagnosis, even if only provisional, concerning the mental state of the person;
- (4) where the purpose of the examination is to determine the necessity for confinement, his opinion as to the gravity of the illness and as to its probable consequences, in addition to the information required under article 29 of the Civil Code of Québec;
- (5) where the purpose of the examination is to determine whether a person is mentally competent to stand trial for a penal offence, his opinion in that regard;
- (6) the reasons and facts upon which his opinion and diagnosis are based and, among the facts mentioned, those which he himself has observed and those which have been communicated to him by others.

4. Where an institution has been required to administer a psychiatric examination, it is incumbent upon the director of professional services or, where there is no such director, upon the executive director of the institution to transmit the physician's report to the court that ordered the examination.

5. The disclosure of the report by the institution is governed by the provisions relating to access to the person's record contained in the legislation respecting health services and social services, and does not require the authorization of the court under article 28 of the Civil Code of Québec.

CHAPTER II

CONFINEMENT

DIVISION I

TEMPORARY CONFINEMENT

6. Only an institution operating a local community service centre equipped with the necessary facilities or a hospital centre may be required to take a person under confinement for psychiatric examination.

7. A physician practising in such an institution may, notwithstanding the absence of consent, admit a person for confinement for not more than forty-eight hours in a facility maintained by the institution, without the authorization of the court and prior to psychiatric examination, if he is of the opinion that the person is suffering from mental illness and that his condition presents an imminent danger to himself or to others.

The admitting physician must immediately inform the director of professional services or, where there is no such director, the executive director of the institution.

On the expiry of the forty-eight hour period, the person must be released, unless a court has ordered an extension of the confinement for psychiatric examination. However, if the forty-eight hour period ends on a Saturday or on a non-judicial day, if no judge having jurisdiction in the matter is able to act and if termination of confinement presents a danger, the confinement may be extended until the expiry of the next judicial day.

8. A peace officer may take a person against his will to an institution mentioned in section 6, at the request of the person having parental authority, the tutor to a minor or any of the persons mentioned in article 15 of the Civil Code of Québec, if he has serious reason to believe that the mental condition of that person presents an imminent danger to himself or to others.

Subject to the provisions of section 25 and subject to medical emergencies considered to have priority, the institution which receives the person must take charge of him upon arrival and have him examined by a physician, who may admit him for temporary confinement in accordance with section 7.

DIVISION II

CONFINEMENT AUTHORIZED BY A COURT PURSUANT TO ARTICLE 30 OF THE CIVIL CODE OF QUÉBEC

9. Only an institution operating a hospital centre, rehabilitation centre, residential and long-term care centre or reception centre that is equipped with the necessary facilities for receiving and treating mentally ill persons, may be required to admit a person for confinement following a court judgment pursuant to article 30 of the Civil Code of Québec.

10. Where the court has set a duration of confinement exceeding 21 days, the person under confinement must be examined periodically to ascertain whether continued confinement is necessary, and reports of such examinations must be produced at the following times:

- (1) 21 days from the date of admission;
- (2) three months from the date of admission;
- (3) every six months thereafter.

The person under confinement is required to submit to these examinations.

The psychiatric examination reports shall be kept by the institution as part of the person's record.

11. A person under confinement may, at his request, be transferred to another institution, if the organization and resources of that institution permit of such a transfer. Subject to the same condition, the attending physician may transfer the person, with his consent, to another institution which he considers better able to meet the person's needs.

However, no transfer may take place unless the attending physician attests, by way of a certificate containing reasons, that in his opinion such a measure does not present any serious and immediate risks for the person or for others, and unless the person consents to a copy of his record being forwarded to the receiving institution.

Following transfer, confinement continues in the new institution.

12. The attending physician may, to promote the recovery, rehabilitation or social reintegration of a person who has been under confinement for more than 21 days, permit that person to absent himself for a few hours or a few days from the place to which he has been admitted, if he considers that such a measure could be beneficial to him and if he attests by way of a certificate, containing reasons, that in his opinion the measure presents no serious and immediate risks for that person or for others. Despite his temporary absences, the person remains under confinement.

The attending physician may revoke the permission without notice if his opinion changes as to the risks or benefits of the measure.

Such revocation is sufficient authority for any person, including a peace officer, to return the person concerned to the institution as soon as possible.

13. Confinement ends, with no further formality,

(1) as soon as a certificate concluding that confinement is no longer justified has been issued by the attending physician;

(2) on the expiry of a time limit prescribed by section 10, if no psychiatric examination report has been produced by that time;

(3) on the expiry of the time fixed in the judgment ordering confinement;

(4) upon a decision to that effect by the Commission des affaires sociales or a court of justice.

14. Where a person ceases to be under confinement but must be detained or lodged, otherwise than in accordance with this Act, the institution must take the necessary steps to entrust the person to the care of a person in authority at an appropriate detention centre or lodging facility.

CHAPTER III

RIGHTS AND REMEDIES

DIVISION I

INFORMATION

15. A peace officer acting under section 8 or any person who, in accordance with a court order, takes a person to an institution for confinement and psychiatric examination must inform him immediately of that fact and of the place where he is being taken.

The peace officer or person remains responsible for that person until he is taken in charge by the institution.

16. As soon as the person has been taken in charge by the institution, or as soon as he seems able to understand the information, the institution must inform him of the place where he is being confined, of the reasons for the confinement and of his right to contact his close relatives and an advocate immediately.

17. The institution admitting a person for confinement pursuant to a judgment referred to in section 9 must, at the time of admission and after each examination report required by section 10, give the person a document in conformity with the schedule.

If the person under confinement is unable to understand the information contained in the document, the institution shall transmit a copy of it to the person qualified to give consent to the confinement. Should there be no such person, the institution shall make reasonable efforts to transmit the information to a person showing a special interest in the person under confinement.

18. The person under confinement must be allowed to communicate, confidentially, with the Commission des affaires sociales, the Public Curator, an advocate, his representative or the person qualified to give consent to the care required by his state of health.

19. The person under confinement must be immediately informed by the institution of the end of the confinement.

20. The institution must, in the case of a minor, send to the person having parental authority or, if there is no such person, to the tutor, or in the case of a person of full age who is represented, send to the mandatary, tutor or curator, notice in writing of

(1) the decision of a physician to admit the person for temporary confinement under section 7;

(2) the necessity for continued confinement, after each of the examinations required by section 10;

(3) any application presented to the Commission des affaires sociales under section 22 of which the institution has been informed;

(4) the end of the confinement.

DIVISION II

COMMISSION DES AFFAIRES SOCIALES

21. The institution to which a person has been admitted for confinement must inform the Commission des affaires sociales, without delay, of the conclusions of each of the psychiatric examination reports required by section 10, and of the end of the confinement.

22. Any person who is dissatisfied with the continuance of confinement or with a decision made under this Act, with regard to himself or to a person that he represents or in whom he shows a special interest, may apply to the Commission des affaires sociales for a review of the continuance of confinement or of the decision.

The Commission may also act on its own initiative to review the continuance of confinement or a decision made under this Act with regard to any person under confinement.

The continuance of confinement and the execution of a decision are not suspended by the review procedure, unless a member of the Commission decides otherwise.

23. An institution must, when so required by the Commission, forward to it the complete record of a person under confinement.

CHAPTER IV

PROTECTIVE MEASURES

24. The use of force, isolation, mechanical means or chemicals in a facility maintained by a health and social services institution to prevent a mentally ill person from inflicting bodily harm upon himself or others, whether or not he is under confinement, must be kept to a minimum and must take into account his physical and mental state.

Every measure referred to in the first paragraph that is taken in respect of a person must be noted in detail in his record. In particular, a description of the methods used, the time during which they were used and a description of the behaviour which gave rise to the measures or to their continued application must be recorded.

CHAPTER V

MISCELLANEOUS PROVISIONS

25. Any institution which, owing to its organization or resources, is unable to provide for a psychiatric examination or admit a person under confinement, must immediately direct any person for whom such services are required to another institution equipped with the necessary facilities.

26. The Minister may designate, in an order published in the *Gazette officielle du Québec*, the institutions from among those referred to in sections 6 and 9 which may receive persons detained under a penal law.

27. The Minister of Health and Social Services is responsible for the administration of this Act.

CHAPTER VI

CONSEQUENTIAL AND FINAL PROVISIONS

28. This Act replaces the Mental Patients Protection Act (R.S.Q., chapter P-41).

29. In any Act, regulation, order in council, order, contract, agreement or other document, any reference to the Mental Patients Protection Act or to a provision thereof is deemed to be a reference to this Act or to the equivalent provision of this Act.

30. Article 781 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by replacing the words “establishment governed by the Acts respecting health services and social services” in the third and fourth lines of the first paragraph by the words “institution governed by the Act respecting the protection of mentally ill persons (*insert here the year and chapter number of this Act*)”.

31. Article 214 of the Code of Penal Procedure (R.S.Q., chapter C-25.1) is amended

(1) by striking out the word “clinical” in the second line;

(2) by replacing the words “Mental Patients Protection Act (chapter P-41)” in the third and fourth lines by the words “Act respecting the protection of mentally ill persons (*insert here the year and chapter number of this Act*)”.

32. Section 6 of the Act respecting the Commission des affaires sociales (R.S.Q., chapter C-34) is amended by replacing the words “mental patients” in subparagraph 2 of the second paragraph by the words “mentally ill persons”.

33. Section 21 of the said Act, amended by section 1 of chapter 20 and by section 10 of chapter 23 of the statutes of 1994, is again amended by replacing paragraph *c* by the following paragraph:

“(c) the applications for review brought under section 22 of the Act respecting the protection of mentally ill persons (*insert here the year and chapter number of this Act*);”.

34. Section 25.1 of the said Act is amended by inserting the words “, and all records transmitted to it pursuant to article 782 of the Code of Civil Procedure (R.S.Q., chapter C-25) or the Act respecting the protection of mentally ill persons (*insert here the year and chapter number of this Act*),” after the word “request” in the second line.

35. The heading of Subdivision 3 of Division II of the said Act is replaced by the following heading:

“§3. — *Protection of mentally ill persons*”.

36. Section 27 of the said Act is amended by replacing the words “mental patients” in the second line of the first paragraph by the words “mentally ill persons”.

37. Section 14 of the Public Curator Act (R.S.Q., chapter C-81), amended by section 23 of chapter 23 of the statutes of 1994, is again amended by striking out the second paragraph.

38. Section 120 of the Notarial Act (R.S.Q., chapter N-2) is amended by replacing the second sentence of subsection 1 by the following sentence: “The same applies to any notary admitted for confinement in a health or social services institution following a court decision under article 30 of the Civil Code of Québec.”

39. Section 1 of the Agricultural Products, Marine Products and Food Act (R.S.Q., chapter P-29), amended by section 23 of chapter 23 of the statutes of 1994, is again amended by striking out the words “the Mental Patients Protection Act (chapter P-41),” in the sixth and seventh lines of paragraph *k*.

40. Section 37 of the Act respecting the determination of the causes and circumstances of death (R.S.Q., chapter R-0.2), amended by section 23 of chapter 23 of the statutes of 1994, is again amended by replacing paragraph 3 by the following paragraph:

“(3) in a facility maintained by a health and social services institution, where the person in whose respect death occurred was under confinement.”

41. Section 1 of the Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5) is amended by replacing the words “for close treatment” in the sixth line of subparagraph *k* of the first paragraph by the words “under confinement”.

42. Section 2 of the said Act is amended by striking out the third paragraph.

43. Section 86 of the said Act is amended by replacing the words “in close treatment within the meaning of the Mental Patients Protection Act (chapter P-41)” in the first and second lines of subparagraph *b* of the first paragraph by the words “under confinement within the meaning of article 30 of the Civil Code of Québec”.

44. Section 3 of the Marine Products Processing Act (R.S.Q., chapter T-11.01), amended by section 23 of chapter 23 of the statutes of 1994, is again amended by striking out the words “the Mental Patients Protection Act (chapter P-41)” in the sixth and seventh lines of the first paragraph.

45. The provisions of this Act come into force on the date or dates to be fixed by the Government.

SCHEDULE

Information document on the rights of, and remedies available to,
a mentally ill person under confinement
(Act respecting the protection of mentally ill persons, s. 17).

(name of the person under confinement)

You have been admitted for confinement, pursuant to a court decision, following one or more psychiatric examination reports.

You have certain rights under the Act respecting the protection of mentally ill persons:

1. You have the right to be transferred to another institution, if your attending physician is of the opinion that such a transfer presents no serious and immediate risks for you or for others, and that the organization and resources of that institution permit of the transfer.

2. You have the right to require that your confinement be terminated without delay if a psychiatric examination report, confirming the necessity of continuing your confinement, has not been produced within 21 days after your admission, again within three months after your admission, and at least once every six months thereafter.

For these purposes, you were admitted on _____ and psychiatric examination reports were produced on the following dates:

(date of each psychiatric examination report produced)

3. You are required to submit to the psychiatric examinations referred to in paragraph 2. However, you may categorically refuse any other examination, care or treatment. In such a case, your decision must be respected by the institution and by your physician, except if the examination or treatment was ordered by a judge, or in the case of hygienic or emergency care.

4. You have the right to require of the institution and of all its employees that any correspondence between you and the Commission des affaires sociales, the Public Curator, your advocate, the person authorized to give consent to the care given to you or your

representative be transmitted immediately and confidentially. Nobody may read any written communication which you send to or receive from those persons. You also have the right to require of the institution and of its employees that you be permitted to have a private conversation with those persons, when they visit or telephone you.

5. If you are not satisfied with a decision made to continue your confinement, or with any other decision made in your respect under the Act respecting the protection of mentally ill persons, you may refer your case to the Commission des affaires sociales.

This is how you proceed:

(a) you yourself may write or ask your parents, tutor, curator or mandatary to write on your behalf to the Commission des affaires sociales at the following address:

(address and telephone number of the Commission des affaires sociales);

(b) you must explain in your letter, to the best of your ability, why you are not satisfied with the continuance of confinement or the decision made in your respect;

(c) you must send the letter to the Commission des affaires sociales within 90 days of the decision with which you disagree, but if you miss this deadline the Commission may still decide to hear you if you give reasons to explain your delay;

(d) the Commission may order your confinement terminated or overturn the decision made concerning you, but must meet with you before reaching its decision;

(e) you have the right to be represented by an advocate at the meeting with the Commission, and to produce witnesses.

6. You must be released from confinement

(a) as soon as a certificate concluding that confinement is no longer justified has been issued by your attending physician;

(b) upon failure to produce a psychiatric examination report within the time limits set out in paragraph 2;

(c) on the expiry of the time fixed in the judgment ordering confinement;

(d) upon a decision to that effect by the Commission des affaires sociales;

(e) upon a decision by a court of justice.

The institution where you are being kept under confinement must inform you immediately of your release from confinement.