

## **Capability & Consent Board** **It's all about HUMAN RIGHTS & DIGNITY**

The Capability and Consent Board is a review board created by the Yukon government through the *Care Consent Act*. It reviews matters under the *Mental Health Act* and the *Care Consent Act*. Board members include community members, lawyers, physicians and other care providers. A panel of three Board members is required to hold a review..

**MENTAL HEALTH ACT** preamble recognizes....

*the justice of special provision for persons suffering from mental disorder*  
*the right to treatment*  
*the cultural, ethnic, and religious diversity of the Yukon*  
*care and treatment of persons suffering from mental disorder should be provided in the least restrictive and least intrusive manner*  
*the civil and human rights of persons suffering from mental disorder must be protected*

The Board has authority to deal with the following matters:

### ***Mental Health Act***

- Review of an involuntary admission
- Review of a renewal of involuntary admissions
- Review of an application to transfer an involuntary patient to a hospital outside of the Yukon
- Review of a certificate related to involuntary admission
- Review of a certificate of return
- Consideration of whether to authorize specified treatments in addition to substitute consent
- Consideration of whether to withhold all or part of the patient's record

### ***Care Consent Act***

- Review of a decision that a person is incapable (or capable) to consent to health care, admission to a care facility or personal assistance services
- Review of a last resort substitute decision made by care providers to major health care or admission to a care facility
- Review of a care providers' choice of a substitute decision-maker
- Review of a substitute decision-maker's decision regarding major health care or admission to a care facility
- Review of a certificate of need for financial protection
- Choice of a substitute decision-maker where equally-ranked decision-makers cannot agree on the care decision
- Consideration of a request from a substitute decision maker for directions regarding wishes

**What is a “mental disorder”?**

**“A mental disorder defined as a substantial disorder of thought, mood, perception, orientation and/or memory which grossly impaired their judgment, behaviour, capacity to recognize reality and/or ability to meeting the ordinary demands of life.”**

## THE MENTAL HEALTH ACT CAN BE INVOKED IN FOUR WAYS:

- **They are being seen by a physician as a patient, are brought to a physician, nursing station or hospital by family or friend, and a Recommendation for Psychiatric Assessment is done by a nurse or physician**

*5(1) A physician who has examined a person may recommend involuntary psychiatric assessment of the person if at least one of the following conditions applies:*

- (a) The physician believes on reasonable grounds that the person as a result of a mental disorder*
  - (i) is threatening or attempting to cause bodily harm to themselves or has recently done so,*
  - (ii) is behaving violently towards another person or has recently done so, or*
  - (iii) is causing another person to fear bodily harm or has recently done so, and the physician believes that the person as a result of the mental disorder is likely to cause serious bodily harm to themselves or to another person;*

- **The Yukon Territorial Court orders a person to be taken to Whitehorse General Hospital for Assessment**

- 6(1) Any person who reasonably believes that another person suffers from a mental disorder may make a written statement under oath or affirmation before a judge requesting an order for an involuntary examination of the other person by a physician and setting out the reasons for the request.*
- (2) The judge who receives a statement under subsection (1) shall consider the statement and, if the judge considers it desirable to do so, hear and consider without notice the allegations of the person who made the statement and the evidence of any witnesses.*
  - (3) The judge may issue an order for the involuntary examination by a physician of the person alleged to be mentally disordered if the judge believes on reasonable grounds that the person will not consent to an examination by a physician and that at least one of the following conditions applies*
    - (a) As a result of a mental disorder the person,*
      - (i) is threatening or attempting to cause bodily harm to themselves, or has recently done so,*
      - (ii) is behaving violently towards another person, or has recently done so, or*
      - (iii) is causing another person to fear bodily harm, or has recently done so, and the person is likely to cause serious bodily harm to themselves or to another person; or*
    - (b) As a result of a mental disorder, the person shows or has recently shown a lack of ability to care for themselves and is likely to suffer impending serious physical impairment.*
  - (4) If the judge considers that the criteria set out in subsection (3) have not been established, the judge shall so endorse the statement made under subsection (1).*
  - (5) An order under subsection (3) for the involuntary examination of a person by a physician shall direct a peace officer or other individual named in the order to take the person named in the order into custody and take that person immediately to the health facility or other place set out in the order where the person may be detained for involuntary examination.*
  - (6) An order under subsection (3) is valid until the end of the sixth day after the day it was made.*

OR

- 7(1) A judge may issue an order for the involuntary examination by a physician of a person appearing before the judge as a result of being charged with an offence against a provision of an Act or regulation of the Yukon if the judge has reasonable grounds to believe that the person is suffering from a mental disorder and will not consent to an examination by a physician and that at least one of the conditions mentioned in subsection 6(3) applies.*
- (2) An order under subsection (1) shall direct a peace officer or other individual named in the order to take the person to the health facility or other place set out in the order where the person may be detained for involuntary examination.*
  - (3) The results of an examination under the order shall be communicated in writing to the judge immediately on completion. S.Y. 1989- 90, c.28, s.7.*

- **The RCMP determine that a person may be suffering from a mental disorder**

**8(1)** *A peace officer may take a person into custody if at least one of the following conditions applies*

(a) *The peace officer believes on reasonable grounds that the person as a result of a mental disorder*

(i) *is threatening or attempting to cause bodily harm to themselves or has recently done so,*

(ii) *is behaving violently towards another person or has recently done so, or*

(iii) *is causing another person to fear bodily harm or has recently done so, and the peace officer further believes on reasonable grounds that the person as a result of the mental disorder is likely to cause serious bodily harm to themselves or to another person; or*

(b) *The peace officer believes on reasonable grounds that the person as a result of the mental disorder shows or has recently shown a lack of ability to care for themselves and the peace officer further believes on reasonable grounds that the person as a result of the mental disorder is likely to suffer impending serious physical impairment.*

(2) *A peace officer who has taken someone into custody pursuant to subsection (1), shall immediately take that person to a physician or a health facility and shall*

- Upon Arrival at Whitehorse General Hospital a physician completes a “Form 4 – Recommendation for Psychiatric Assessment” which provides authority for the hospital to detain the person against their will, and to provide treatment as necessary for up to 24 hours.

## **INVOLUNTARY ADMISSION**

- Within 24 hours the person is assessed and if two physicians determine the criteria Involuntary Admission has been met, the person is advised of their Rights and detained as an Involuntary Patient for up to 21 days.

**13(1)** *The physicians who have examined a person pursuant to a recommendation and who have assessed the person’s mental condition may admit the person as an involuntary patient of the hospital by each completing and filing with the person in charge of the hospital a certificate of involuntary admission in the prescribed form if the physicians believe on reasonable grounds*

(a) *that the person is suffering from a mental disorder that, unless the person remains in the custody of a hospital, is likely to result in*

(i) *serious bodily harm to the person or to another person, or*

(ii) *the person’s impending serious mental or physical impairment; and*

(b) *that the person is not suitable for admission as a voluntary patient.*