Law n.º 36/98 of July 24 : Mental Health Act

The Assembly of the Republic decrees the following, with the force of national law, pursuant to Article 161, paragraph c), Article 165 paragraphs a) and b) of nº 1 and Article 166 nº 3 of the Constitution:

CHAPTER I

General provisions

Article 1

Objectives

The present Act establishes the general principles of the mental health policy and governs the compulsory detention of persons suffering from mental disorders, namely persons with mental illness.

Article 2

Protection and promotion of mental health

1. The protection of mental health is achieved through measures which contribute towards ensuring or re-establishing the individuals' mental equilibrium, enhancing the development of the capacities involved in the construction of the personality and promoting their critical integration in their social environment.

2. The measures referred to in the preceding paragraph, include primary, secondary and tertiary activities for the prevention of mental illness, as well as those which contribute to the promotion of the populations' mental health.

Article 3

General principles of mental health policy

1. Without prejudice to the provisions of the Framework Law for Healthcare, the following general principles should be observed:

a) The provision of mental healthcare is undertaken primarily at the community level, so as to avoid the displacement of patients from their familiar environment and to facilitate their rehabilitation and social integration;

b) Mental healthcare is provided in the least restrictive environment possible;

c) The treatment of mental patients on an inpatient basis, usually takes place in general hospitals;

d) The care of patients who fundamentally require psychosocial rehabilitation, is preferably undertaken in residential structures, day centres and training and professional rehabilitation units, which are part of the community and adapted to the patient's specific degree of autonomy.

2. In the cases stipulated in paragraph d) of the preceding paragraph, the charges incurred with the services rendered within the framework of rehabilitation and social integration, residential support and professional reintegration will be subsidised pursuant to the provisions to be defined by the members of Government responsible for the areas of health, social security and employment.
3. Mental healthcare is to be provided by multidisciplinary teams capable of responding in a concerted manner to the medical, psychological, social, nursing and rehabilitation aspects.

Article 4

National Council of Mental Health

1. The National Council of Mental Health is the Government's advisory body in matters pertaining to mental health policy, with the representation of the entities interested in the functioning of the mental health system, namely family and patient associations, health subsystems, mental health professionals and government agencies with related fields of activity.

2. The membership, responsibilities and functioning of the National Council of Mental Health are governed by Decree-Law.

Article 5

Patient Rights and Duties

1. Without prejudice to the provisions of the Framework Law for Healthcare, the patient utilising the mental health services, is further entitled to:

   a) Adequate information regarding his/her rights as well as the proposed treatment plan and expected effects;

   b) Receive treatment and protection, based on the respect for his/her individuality and dignity;

   c) Decide whether or not to accept the proposed diagnostic and therapeutic interventions, except in cases of compulsory detention or in emergency situations in which non-intervention would pose verifiable risks to the person himself or to others;

   d) Not be submitted to electroconvulsive therapy without his/her previous written consent;

   e) Accept or refuse, in accordance with the laws in force, to participate in investigations, clinical experiments or training activities;

   f) Benefit from proper living conditions, hygiene, food, safety, respect and privacy in hospitalisation services and residential structures;

   g) Partake of outside contact and be visited by family, friends and legal representatives with the limitations inherent to the functioning of the services and the nature of the illness;

   h) Receive just remuneration for activities performed or services rendered;

   i) Receive support in exercising the rights of protest and complaint.

2. Psychosurgical interventions require, in addition to previous written consent, the favourable written opinion of two psychiatric doctors designated by the National Council of Mental Health.

3. The rights referred to in paragraphs c), d) and e) of nº 1 shall be exercised by legal representatives, in situations where the patients are under the age of 14 or do not possess the necessary judgement to evaluate the meaning and implications of the consent.

CHAPTER II

Compulsory detention
SECTION I

General provisions

Article 6

Scope of application

1. This chapter regulates the compulsory detention of persons suffering from mental disorders.

2. Voluntary admission is not covered by the provisions of this Chapter, except in cases where a person voluntarily admitted into an institution, falls under the conditions stipulated in Articles 12 and 22.

Article 7

Definitions

For the purposes of this Chapter, the following shall be considered:

a) Compulsory detention: detention of a person suffering from a serious mental disorder as a result of a judicial decision;

b) Voluntary detention: detention at the request of a person suffering from a mental disorder or the legal representative of a minor under the age of 14;

c) Patient to be detained: person suffering from a mental disorder submitted to the proceeding leading to the decisions stipulated Articles 20 and 27;

d) Institution: Hospital or analogous institution which provides for the treatment of a person suffering from a mental disorder;

e) Public health authorities: As described by law;

f) Police authorities: directors, officials, inspectors and sub-inspectors of the police force so recognised by the respective laws.

Article 8

General Principles

1. Compulsory detention may only be determined in cases where it is deemed to be the only way of guaranteeing that the detained patient is submitted to treatment, and shall be suspended as soon as the reasons for its inception have ceased to exist.

2. Compulsory detention may only be determined in cases where it is deemed proportional to the danger and the legally protected value in question.

3. Whenever possible, detention should be substituted for out-patient treatment.

4. The restrictions imposed by compulsory detention on a patient's fundamental rights shall be those which are strictly necessary and suitable to the effectiveness of the treatment and the safety and normal functioning of the institution, in accordance with the respective internal regulations.

Article 9
Subsidiary Laws

In the cases which are not contemplated herein, the Code of Criminal Procedure shall be applicable, duly adapted.

SECTION II

Of rights and duties

Article 10

1. The patient to be detained has the right to:

   a) Be informed of his/her rights;

   b) Be present in the procedural acts which directly pertain to him, except in situations where his/her state of health does not so permit;

   c) Be heard by a judge whenever a decision might be taken which personally affects him, except in cases where his/her state of health renders the hearing futile or unfeasible;

   d) Be assisted by an appointed or nominated defence attorney, in all procedural acts in which he participates and in those procedural acts which directly pertain to him and in which he is not present;

   e) Submit evidence and request the proceedings deemed necessary.

2. It is incumbent upon the patient to be detained to submit himself to the measures and proceedings stipulated in Articles 17, 21, 23, 24 and 27.

Article 11

Rights and duties of the detained patient

1. The detained patient maintains the rights recognised to patients admitted in general hospitals.

2. The detained patient benefits in particular from the right to:

   a) Be informed of and, whenever necessary explained his/her rights;

   b) Explained the reasons surrounding his/her deprivation of freedom;

   c) Assisted by an appointed or nominated defence attorney, with whom he may communicate in private;

   d) Appeal the compulsory detention decision as well as the decision to extend such detention;

   e) Vote, in accordance with the law;

   f) Send and receive mail;

   g) Communicate with the commission stipulated in Article 38.

3. The detained patient has the duty to submit to the medically prescribed treatments, without prejudice to the provisions of Article 5 paragraph 2.
SECTION III

Detention

Article 12

Principle

1. A person suffering from a serious mental disorder, who by virtue of this condition creates a situation of danger to legally protected rights of relevant value, whether his/her own or those of others, of a personal or patrimonial nature, and refuses to submit to the necessary medical treatment may be compulsorily detained in an appropriate institution.

2. A person suffering from a serious mental disorder who lacks the necessary discernment to evaluate the meaning and implications of consent, may be compulsorily detained in cases where the absence of treatment can result in a significant deterioration of his/her condition.

Article 13

Eligibility

1. Compulsory detention may be petitioned by the legal representative of a person suffering from a mental disorder, any person eligible to apply for his/her interdiction, public health authorities and the Public Prosecution Service.

2. Whenever a doctor in the exercise of his/her duties, detects a mental disorder with the effects stipulated in Article 12, he may communicate such information to the competent public health authority for the purposes of the provisions of the preceding paragraph.

3. The clinical director of an institution, is also eligible to apply for compulsory detention, in cases where detection of a mental disorder occurs in the course of a voluntary admission to such institution.

Article 14

Application

1. The application, addressed to the competent court is made in writing without any special formalities and should contain a description of the facts upon which the request of the applicant is based.

2. Whenever possible, the application should comprise information which can contribute to the decision of the judge, namely psychiatric and psychosocial reports.

Article 15

Subsequent provisions

1. Following receipt of the application, the judge shall notify the patient to be detained, inform him of his/her procedural rights and duties and nominate a defence attorney, the intervention of whom shall cease if he appoints his/her own attorney.

2. The defence attorney as well as the nearest relative residing with the patient, or person living with him as a spouse, are notified to submit whatever applications they might see fit, within a period of five days.
3. The file is sent to the Public Prosecution Service for the same purposes and with the same time limit.

**Article 16**

**Fact Finding procedures**

1. The judge, either officiously or by application, shall determine the procedures which he deems appropriate, and essentially, the psychiatric assessment of the patient, who will be duly notified for the purpose.

2. In the case stipulated under Article 13 paragraph 3, the judge may forego the assessment referred to in the preceding paragraph, designating at once the date for the joint session, pursuant to Article 18.

**Article 17**

**Psychiatric assessment**

1. The psychiatric assessment is remanded to the official psychiatric assistance services, of the patient's area of residence and should be carried out within a period of 15 days, by two psychiatrists, with the possible assistance of other mental health professionals.

2. In exceptional cases, the assessment referred to in the previous paragraph may be remanded to the forensic psychiatry services of the Institute of Forensic Medicine.

3. Whenever there is a strong likelihood that the patient to be detained will not be present on the designated date, the judge shall issue a bench warrant to ensure appearance.

4. The services shall forward their report to the court, within a maximum period of seven days.

5. The technical scientific assessment inherent to the psychiatric assessment, is not subject to the judge's free appraisal.

**Article 18**

**Joint session preparatory measures**

1. After receipt of the psychiatric assessment, the judge shall designate a date for the joint session, of which the patient to be detained, the defence attorney, the applicant and the Public Prosecution Service shall be informed.

2. The judge may convene to the session any other persons whose hearing he deems appropriate, namely the attending physician and determine officiously or by application, that the psychiatrists render additional clarifications, for which purpose they shall be informed of the day, time and place of the joint session.

3. In cases of conflicting psychiatric assessments, each psychiatrist shall render his/her report and the judge may determine that the psychiatric assessment be repeated by other psychiatrists, pursuant to Article 17.

**Article 19**

**Joint session**
1. The patient's defence attorney and the Public Prosecution Service must be present at the joint session.

2. After hearing the persons convened, the judge shall allow the applicant's attorney, the Public Prosecution Service and the defence attorney to make their summary pleadings and shall render a decision immediately, or within a maximum period of five days in complex cases.

3. In cases where the patient to be detained agrees to the detention and there are no reasons to question this acceptance, the judge shall arrange for him to report to the nearest official mental health service and shall determine that the case be filed.

**Article 20**

**Decision**

1. The detention order shall always be well-founded.

2. The detention order shall identify the person to be detained and specify the clinical reasons, clinical diagnosis, whenever available and the motive for detention.

3. The Public Prosecution Service, the patient to be detained, the defence attorney and the applicant, shall be notified of the detention order, the reading of which shall be equivalent to the notification of the parties present.

**Article 21**

**Implementation of the detention order**

1. In the detention order, the judge shall determine that the detained patient report to the nearest official mental health service, which shall arrange for immediate admission.

2. The judge shall issue a bench warrant with the identification of the person to be detained, which shall be executed whenever possible, by the service referred to in the preceding paragraph, with the assistance if necessary, of the police forces.

3. In cases where compliance cannot be met in accordance with the preceding paragraph, the bench warrant may be executed by the police forces which, whenever necessary may request the assistance of the mental health or local health services.

4. As soon as the final place of detention has been determined, which should be located as close as possible to the detained patient's residence, the latter shall be communicated to the defence attorney as well as the nearest relative residing with the patient, person living with him as a spouse, or person of his/her confidence.

**SECTION IV**

**Emergency Admission**

**Article 22**

**Provisions**

A person suffering from a serious mental disorder may be subject to an emergency compulsory detention, pursuant to the following articles, in cases where, given the provisions of Article 12 paragraph 1, there is imminent danger to the legally protected values referred therein, namely due to an acute deterioration of the person's state.
Article 23

Escort of the patient to be detained

1. Given the provisions of the preceding Article, the police or public health authorities may determine, officiously or by application, through a warrant, that the person suffering from a mental disorder be escorted to the institution referred in the proximate Article.

2. The warrant is executed by the police forces, with the assistance, whenever possible, of the services of the institution referred to in the proximate Article. The warrant shall be signed by the competent authority and shall provide the identification of the person to be escorted and indication of its basis.

3. In cases where, due to the urgency of the situation and the dangers of delay, a warrant may not be previously issued, any police officer may proceed with the immediate escort of the patient.

4. In the above mentioned case, the police officer shall make a report outlining the facts as well as the time and place in which the occurrence took place.

5. The Public Prosecution Service with responsibility for the area in which the escort was initiated, shall be advised of the occurrence immediately.

Article 24

Presentation of the patient to be detained

The patient to be detained, shall immediately be presented to the nearest institution with a psychiatric emergency, to the place where the process of detention was initiated, where he will be submitted to a formal psychiatric assessment and provided with the appropriate medical assistance.

Article 25

Subsequent provisions

1. In cases when the psychiatric assessment determines the need for detention and such a measure is opposed to by the patient, the institution shall immediately communicate the admission of the patient to the competent court, with copy of the warrant and assessment report.

2. In cases where the psychiatric assessment does not determine the need for detention, the entity which presented the person suffering from a mental disorder shall set him immediately free and submit the process to the Public Prosecution Service with responsibility for the area in which the escort was initiated.

3. The provisions of paragraph 1 are applicable when in the psychiatric emergency or during the course of a voluntary admission the situation described in Article 22 becomes apparent.

Article 26

Judicial confirmation

1. Upon receipt of the communication referred to in paragraph 1 of the preceding Article, the judge shall appoint a defence attorney for the patient and examine the reports of the Public Prosecution Service.
2. After conducting the necessary steps, the judge shall issue a decision regarding whether detention should or not be maintained, within a maximum time limit of forty eight hours from the deprivation of freedom, pursuant to articles 23 and 25 paragraph 3.

3. The decision to maintain the detention is communicated to the competent court along with all the elements on which it is based.

4. The decision is communicated to the patient and nearest relative residing with him, or person living with him as a spouse, as well as to the attending physician; the former shall be advised whenever possible, of his/her procedural rights and duties.

**Article 27**

**Final decision**

1. Upon receipt of the communication referred to in paragraph 3 of the preceding Article, the judge shall begin the compulsory detention process based on the principles stipulated in Article 12 and shall therefore order a new psychiatric assessment to take place within five days by two psychiatrists not involved in the previous assessment and with the possible assistance of other mental health professionals.

2. The provisions of Article 15 shall also be accordingly applicable.

3. Upon receipt of the psychiatric assessment and once the necessary steps have been undertaken, the date for the joint session shall be designated, to which the provisions of articles 18, 19, 20 and 21 paragraph 4 shall be accordingly applicable.

**SECTION V**

**Special cases**

**Article 28**

**Pending criminal suit**

1. The existence of a pending criminal suit in which the person suffering from a mental disorder is the defendant, does not preclude the competent court from ruling on compulsory detention pursuant to this statute.

2. In case of compulsory detention, the institution shall submit, every two months information regarding the progress of the person suffering from a mental disorder to the court where the criminal suit is pending.

**Article 29**

**Compulsory detention of a non-imputable person**

1. The court which does not apply the safety measure set out in Article 91 of the Criminal Code can decide upon the compulsory detention of a non-imputable person.

2. In all cases where detention is imposed, a certificate of the decision shall be submitted to the competent court for the purposes of the provisions of articles 33, 34 and 35.
Common provisions

Article 30

Rules of competence

1. For the purpose of the provisions of this Article, competent court shall mean the judicial court of generic competence of the patient's area of residence.

2. If in the district of residence of the patient there is a judicial court specialising in criminal matters, the latter shall be held as the competent court.

Article 31

Habeas corpus by virtue of illegal deprivation of freedom

1. The person suffering from a mental disorder who is deprived of freedom, or any citizen in the use of his/her political rights may petition the court of the area where the person is found for immediate release based on any of the following:

   a) The time period set out in Article 26 paragraph 2 has elapsed;

   b) The deprivation of freedom was carried out or ordered, by an incompetent entity;

   c) The deprivation of freedom was engendered outside the cases or conditions stipulated in this Act.

2. Upon receipt of the petition, the judge, except in cases where the latter is deemed manifestly ill-founded, shall order if necessary by telephone, the immediate appearance of the person suffering from the mental disorder.

3. In conjunction with the order referred to in the preceding paragraph, the judge shall notify the entity charged with the responsibility for the person suffering from a mental disorder, or representative, to be present at the same hearing with the necessary information and clarifications for a decision on the application.

4. The judge shall render a decision after hearing the Public Prosecution Service and the defence attorney, appointed or nominated for the purpose.

Article 32

Decisions subject to appeal

1. Without prejudice to the provisions of the previous Article, the decision rendered pursuant to articles 20, 26 paragraph 2, 27 paragraph 3, and 35 are subject to appeal to the competent Court of Appeal.

2. The detained patient, his/her defence attorney, the person applying for detention, pursuant to Article 13 paragraph 1 and the Public Prosecution Service may appeal.

3. The appeals stipulated in this Chapter are only reversal in nature.

Article 33

Alternative to compulsory detention
1. Detention is substituted for compulsory out-patient treatment, whenever such treatment can be performed under conditions of freedom, without prejudice to the provisions of articles 34 and 35.

2. The alternative to detention depends upon the express agreement of the detained patient, to the conditions for out-patient treatment, stipulated by the attending psychiatrist.

3. The alternative shall be communicated to the competent court.

4. Whenever the stipulated conditions are not met with by the patient, this situation shall be reported to the competent court and detention shall be resumed.

5. Whenever necessary, the institution shall request from the competent court, the issue of bench warrants to be executed by the police forces.

**Article 34**

**Discharge of patients compulsorily detained**

1. Compulsory detention shall terminate, once the factors which originate this measure have ceased.

2. Compulsory detention shall cease following a discharge order by the institution's clinical manager, based on a psychiatric assessment report by the health service where detention took place, or by a judicial decision.

3. The discharge shall be immediately communicated to the competent court.

**Article 35**

**Review of the detained patient's situation**

1. In cases where the existence of factors justifying the cessation of the compulsory detention is evoked, the competent court shall promptly examine the matter.

2. A review of the patient's situation is mandatory, independently of whether it is requested, two months following the beginning of the detention, or the decision to extend it.

3. The detained patient, his/her defence attorney and the persons referred to in Article 13 paragraph 1 are all entitled to request a review.

4. For the purposes of the provisions of paragraph 2, the institution shall send a psychiatric assessment report by two psychiatrists with the possible assistance of other mental health professionals, up to 10 days before the date established for the review.

5. The Public Prosecution Service, the patient's defence attorney and the detained patient shall be heard at the mandatory review, except in cases where the patient's state of health renders his/her hearing futile or unfeasible.

**SECTION VII**

**Of the nature and costs of the proceedings**

**Article 36**

**Nature of the proceedings**

The proceedings set out in the current Chapter are of a secret and urgent nature.
Article 37

Costs

The proceedings set out in this Chapter are exempt of costs.

SECTION VIII

Monitoring Commission

Article 38

Establishment and purposes

A Commission is hereby established, to monitor the implementation of the provisions of the current Chapter, herein after designated as "Commission".

Article 39

Head Office and administrative services

Through a joint order of the Ministers of Justice and Health, the technical and administrative support services to the Commission are hereby defined, as well as the respective head Office.

Article 40

Membership

The Commission is comprised of psychiatrists, lawyers, a representative of the association of mental health family members and users and other mental health workers appointed by joint order of the Ministers of Justice and Health.

Article 41

Responsibilities

The Commission shall have as its main responsibilities to:

a) Visit the institutions and communicate directly with detained patients;

b) Request from or submit to any administrative or legal institution, information regarding detained patients;

c) Receive and examine the complaints of the detained patients or of persons eligible to request the detention, regarding their conditions;

d) Request that the Public Prosecution Service undertake the necessary legal proceedings with the competent court, to correct any violations of the law which it may observe during the course of its duties;

e) Gather and analyse the information regarding the application of the current Chapter;

f) Propose to the Government the measures deemed necessary to the implementation of the current Act.
Article 42

Co-operation

1. For the purposes of paragraph e) of the preceding Article, the courts shall submit to the Commission, copies of the decisions set-out in the current Chapter.

2. It is the duty of public and private institutions to render the commission the necessary co-operation for the exercise of its responsibilities.

Article 43

Database

Pursuant to the terms and conditions set-out in the legislation regarding protection of personal data and medical secrecy, the commission shall promote the organisation of a computer database regarding the application of the current Chapter, accessible to public and private entities with a legitimate interest in the matter.

Article 44

Report

The commission shall present a yearly report to the Government until March 31st of the following year, on the exercise of its responsibilities and the implementation of the provisions of the current Chapter.

CHAPTER III

Final and transitory provisions

Article 45

Transitory provisions

1. The proceedings filed up to the date of entry into force of the present statute shall continue to be governed by Law nº 2118 of April 3, 1963, until the decision to apply the detention.

2. The hospital institutions harbouring compulsory detained patients under the law referred to in the preceding paragraph, shall, within a maximum time limit of two months following the entry into force of the current Act, communicate to the competent court the clinical situation of those patients and the basis for the respective detention and shall identify the proceeding at which the decision determining the detention was given.

3. In cases where the decision pertaining to detention is given after the entry into force of the current Act, the time limit referred to in the preceding paragraph shall begin after the commencement of the implementation of the decision determining the detention.

4. The court shall request the proceeding in which the decision was given from the entity which determined the detention and once this has been received, shall comply with the provisions of Article 35 of the current Act.

SECTION II

Final provisions
Article 46

Management of patient's assets

The management of assets belonging to mental patients who have not been declared mentally incompetent, are governed by decree-law.

Article 47

Mental health services

The organisation of mental health services is governed by decree-law.

Article 48

Entry into force

The current Act shall enter into force six months following its publication.

Article 49

Revocation

Law nº 2118 of April 3, 1963 is hereby revoked.

Approved on June 18, 1998. The President of the Assembly of the Republic, António Almeida Santos.

Enacted on July 8, 1998. To be published. The President of the Republic, Jorge Sampaio.

The Prime-Minister, António Manuel de Oliveira Guterres.