

Mental Health Amendment Bill 2012

(Introduced by Mr M. Whitely, MLA)

Explanatory Memorandum (E289)

The Mental Health Amendment Bill 2012 removes two of the five alternative criteria that enable a psychiatrist to make a person they consider to be mentally ill an involuntary patient.

The five ways this can happen under section 26 of the current *Mental Health Act 1996* are if the person considered to be mentally ill is also considered to be:

1. A danger to the health and safety of themselves or others (remains unchanged).
2. At risk of serious self-inflicted financial harm (remains unchanged).
3. A risk to serious damage to property (remains unchanged).
4. At risk of lasting damage to an important personal relationship resulting from damage to the reputation of the person to be detained (removed via this Bill).
5. At risk of serious damage to their own reputation (removed via this Bill).

Currently those judged to be mentally ill and meet any of the above criteria can be denied their liberty by being detained as an involuntary patient and involuntarily treated with psychotropic medications or other invasive interventions.

By removing the criteria at 4 and 5 the Bill will help prevent the arbitrary detention and treatment of people who have not committed a crime and do not pose a threat to the health and safety of themselves or others, or to property, or to their own financial wellbeing.

The deleted provisions at 4 and 5 above are ambiguous and can be abused as catch-all provisions. These extra-ordinary provisions confer unreasonable and unrestrained power upon psychiatrists to without immediate review involuntarily detain and treat citizens who have committed no crime and who do not represent a danger to themselves, others or property.

The first three abovementioned remaining alternative rationales for making a mentally ill person an involuntary patient will remain. They allow sufficient scope to involuntarily detain mentally ill people who represent a danger to the health and safety of themselves or others, or are at risk of seriously damaging property or of suffering serious future financial harm. These provisions offer sufficient scope to protect mentally ill people from harms that are real, demonstrable and significant.

The Bill will help restore an appropriate balance between the need to protect mentally ill people and others from significant harm and the liberty and freedoms of all citizens.