



BRIEF OF THE COMMUNITY LEGAL ASSISTANCE SOCIETY REGARDING
CHANGES TO THE POLICE ACT

SUBMITTED TO THE SPECIAL COMMITTEE ON REFORMING THE *POLICE ACT*

APRIL 30, 2021

Community Legal Assistance Society

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Submitted by Kevin Love, Supervising Lawyer, Community Law Program

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We thank you for this opportunity to make submissions with respect to potential reforms to the *Police Act* and related legislation.

About the Community Legal Assistance Society (CLAS)

CLAS is a non-profit law firm that has served the people of British Columbia since 1971. We provide legal assistance and work to advance the law to address the critical needs of those who are disadvantaged or face discrimination. CLAS pursues this mandate through a range of direct legal services, strategic litigation, and law reform activities. CLAS's work focuses on five key areas of law that impact the critical needs of our clients: housing security, income security, workers' rights, mental health, and human rights.

A key component of CLAS's mandate is to provide legal advice and representation to people who are subject to involuntary measures, including detention, under the *Mental Health Act*, the *Adult Guardianship Act*, and the mental disorder provisions of the *Criminal Code of Canada*. In November of 2017, CLAS published *Operating in Darkness*, our report on the *Mental Health Act* and reforms needed to protect the rights of people who have, or are perceived to have, mental disabilities.¹

In the 2020-2021 fiscal year, CLAS provided representation through our Mental Health Law Program to 1,663 people detained under the *Mental Health Act*. Many of the clients we serve regularly come into contact with police and other emergency services. The number of people involuntarily detained under the *Mental Health Act* has increased roughly 71% between 2006 and 2017. More people are now admitted involuntarily to hospital under the *Mental Health Act* than voluntarily.² A great number of these involuntarily admissions involve police contact. Data

¹ Laura Johnston, "Operating in Darkness: BC's Mental Health Act Detention System", online: (November 2017), Community Legal Assistance Society https://d3n8a8pro7vhmx.cloudfront.net/clastest/pages/1794/attachments/original/1527278723/CLAS_Operating_in_Darkness_November_2017.pdf?1527278723 [*Operating in Darkness*]

² British Columbia, The Office of the Ombudsperson, "Committed to Change: Protecting the Rights of Involuntary Patients Under the Mental Health Act", Special Report No. 42 (Victoria: Office of the Ombudsperson, March 2019) at p. 15 [Committed to Change].

released by the Royal Canadian Mounted Police (the “RCMP”) shows that there are between 46,000 and 66,000 police contacts pursuant to the *Mental Health Act* each year.³

CLAS’s Submissions

Without diminishing the critical need for broader reforms to the *Police Act*, CLAS’s submissions will focus on police apprehensions under the *Mental Health Act*. Police apprehensions under the *Mental Health Act* should be guided by the following principles:

1. Voluntary services and interventions are always preferable to involuntary interventions, particularly by police;
2. Involuntary interventions should be as minimally restrictive and intrusive as possible, particularly in the non-criminal context;
3. Mental health interventions should be carried out by appropriate health care and community workers, not the police, whenever possible; and
4. People who are apprehended or otherwise subjected to involuntary measures must have their legal rights respected and protected.

CLAS recommends the following amendments to the *Mental Health Act*. Although the *Mental Health Act* as a whole is outdated and in need of broad reform, these recommendations target only the provisions of the *Mental Health Act* that frequently result in police contact.

- 1. Reform s. 28 of the *Mental Health Act* to require that police consider less restrictive and intrusive measures to address the emergency before apprehending the individual.**

Apprehension by police is a very serious measure, particularly when deployed for non-criminal purposes. For people with mental illness, the experience can be especially traumatic.

³ British Columbia, Royal Canadian Mounted Police, *RCMP Occurrence Report*, <https://www.rcmp-grc.ca/transparenc/police-info-policieres/calls-appels/occurrence-incident-eng.htm>.

Apprehension by police should be a last resort when there is an imminent risk of harm. Other interventions to help the person should be prioritized. People experiencing a mental health crisis need resources, support, and caring assistance. Interventions should be carried out by mental health and community resources with the training to assist a person in crisis, as opposed to police, whenever possible.

The requirement to consider less restrictive and intrusive measures should be embedded in the legislation. However, to make this amendment meaningful in practice, resources should be redirected to increasing funding of mental health and community services that are better placed than police to prevent and respond to mental health emergencies.

Furthermore, *Operating in Darkness* comments on the lack of criteria to define, govern, or oversee the use of restraints against detainees in the *Mental Health Act*.⁴ We maintain that the use of restraints should be a last resort, and that this principle should also apply to apprehensions made by police under the *Mental Health Act*. We recommend that criteria be put in place to ensure that people apprehended by police be treated and transported with care and dignity during their health emergency.

2. The *Mental Health Act* should be amended to explicitly protect people's fundamental rights when apprehended by police.

People apprehended under the *Mental Health Act* should not have fewer rights than people detained for criminal purposes. At the very least, the *Mental Health Act* should require that police inform the individual why they are being apprehended and of their right to speak with a lawyer. In particular, it is critical that people understand they are being apprehended under the *Mental Health Act*, and not for criminal purposes. For the right to counsel to be meaningful, an independent rights advice service must be established to provide timely advice to those apprehended or detained under the *Mental Health Act*, as the BC Ombudsperson recently recommended.⁵

⁴ *Operating in Darkness* at pp. 41-51.

⁵ *Committed to Change*, p. 99

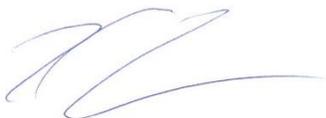
3. Eliminate, or provide independent oversight of, warrants issued under sections 39(3) and 41 of the *Mental Health Act*

Sections 39(3) and 41 of the *Mental Health Act* allow the director of a detaining institution to unilaterally issue a warrant to apprehend an individual who leaves the facility without authorization or who has breached the conditions of their extended leave or transfer from hospital. This as an overly harsh and blunt measure, particularly given that detention under the *Mental Health Act* is non-criminal and not designed to punish. Efforts to ensure the safety of the individual should be carried out by trained health care and community resources, not police, whenever possible.

Warrants often have the unfortunate and counterproductive consequence of driving people into hiding, away from supports and services, for fear of being apprehended by police. These warrants are also manifestly unfair because they are issued unilaterally by the director of the detaining facility, without independent review by a judge or justice of the peace. In effect, the director of the detaining facility dictates the terms of the extended leave, which are often unreasonable in our experience, and can then enforce those conditions by issuing a warrant without any independent review of whether the individual is actually in breach. Sections 39(3) and 41 are also unnecessary to protect public safety because an individual can already be apprehended under s. 28 of the *Mental Health Act* if they are likely to endanger themselves or others.

Thank you for considering these submissions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kevin Love', with a long horizontal flourish extending to the right.

Kevin Love

Supervising Lawyer, Community Legal Assistance Society