



CHAPTER 2

Imprisonment Without Charges

The *Mental Health Act*

Under the *Mental Health Act*, police officers can use force to take you to a hospital for an exam by a doctor if they think that you are acting in a way that is dangerous to yourself or other people, and you seem to have a mental illness that needs treatment. A police officer must see you acting this way himself, or receive reports of your behaviour from other people – including members of your family.

Another way you could be taken to an institution under the *Mental Health Act* is if a person (usually a family member or friend) asks a Judge or Justice of the Peace to force you to be examined by a doctor. They must show there are reasons why you are dangerous to yourself or others, that you have a mental disorder and that you need treatment. Being dangerous to yourself means that your physical or mental health will be harmed if you are not taken into custody and treated. If a Judge gives that order, any person can take you by force to a mental health facility (usually a hospital) for an exam.

If a doctor examines you and issues a certificate saying that you have a mental illness, and you require treat-

Car 87

In Vancouver, the police often respond to mental health emergencies using **Car 87**. **Car 87** is a regular police car staffed with a nurse or other psychiatric personnel and a police officer.



ment and care to prevent further mental or physical harm to yourself or others, you can be held and treated for up to 48 hours. If you are not already at a hospital, anyone can take you to a facility using force once a doctor issues that certificate.

If another doctor then examines you and agrees with the first doctor, you can be held against your will for a full month at the institution before another review. A child under 16 may be taken to a mental health facility if a parent or guardian asks for the child to be taken there.

Mental Health Detention Review

You should be told your rights when you are first taken to the location where you will be held for treatment. You have the right to challenge the reasons why you are being held by asking for a review panel. A review panel is a group of three people who have the power to release you if you convince them you should not be held for treatment. You have the right to be represented by a lawyer or other person at your review panel hearing.

You can request a review panel by asking staff for the form used to request a review panel. After you complete the form and hand it in, the review panel must be held within two weeks.

Mental Health Rights

If you want to know more about your rights when appearing in front of a mental health review panel, you can call the B.C. Mental Health Law Program at 604-685-3425 or 1-888-685-6222. They may also be able to provide you with an advocate who will appear with you in front of the review panel.



See B.C. *Mental Health Act*

Breach of the Peace

Section 31 of the *Criminal Code* allows the police to arrest you for breaching the peace. Breaching the peace means you are causing a disturbance that involves some potential for violence. Usually, simply causing a disturbance or being a nuisance without violence is not enough reason for the police to arrest you.

Even though you can be arrested for breaching the peace, there is no specific offence of breaching the peace. This means that police must release you after they arrest you unless they are going to charge you for breaking another law. Police usually use *Breach of the Peace* to arrest people and release them in another area away from the problem. They may keep you in a cell for a brief period.

A B.C. Court of Appeal case (*Hayes v. Thompson, 1985*) suggests the police are able to arrest you before you breach the peace if they have reason to believe that you are just about to breach the peace. This means police can arrest you even if you haven't yet breached the peace.



Police Accountability

If you feel you were arrested inappropriately for ***Breach of the Peace***, you should consult a lawyer or make an official police complaint (see page 56 for details).



Public Intoxication

Public areas are areas where anyone can go. They may be government owned, but can also be privately owned. Public areas include parks, bars, restaurants, malls, the beach and the street. A public area is not your own home, a hotel room, or the house of a friend. If you are in a public area and you are intoxicated, the police can arrest you under the *Offence Act*, Section 91(1). Intoxicated means that you are so drunk or high that you are unable to care for yourself, you are a danger to yourself or others, or you are causing a disturbance.

Your Rights

Remember! Even if you have a mental illness, you are intoxicated in public, or you are breaching the peace, you still have all of your rights, including the right to talk to a lawyer and the right to remain silent.



If you are arrested because you are intoxicated in a public area, the police must release you when you are sober. They must also release you if an adult who is sober and responsible asks the police to release you into his care.

A law still exists that could allow the police to force you into treatment for being an alcoholic. This law is rarely, if ever, used.

See B.C. *Offence Act*