

Victims' Rights in the Health System

Your rights as a registered victim of a person detained
in hospital for mental health treatment

Citation: Ministry of Health. 2018. *Victims' Rights in the Health System: Your rights as a registered victim of a person detained in hospital for mental health treatment*. Wellington: Ministry of Health.

Published in November 2018 by the Ministry of Health
PO Box 5013, Wellington 6140, New Zealand

ISBN 978-1-98-856813-3 (online)
HP 6963



This document is available at health.govt.nz



This work is licensed under the Creative Commons Attribution 4.0 International licence. In essence, you are free to: share ie, copy and redistribute the material in any medium or format; adapt ie, remix, transform and build upon the material. You must give appropriate credit, provide a link to the licence and indicate if changes were made.

Contents

Introduction	1
What you can expect from services that are helping you	1
Your rights to information	1
About this booklet	2
2. Receiving information: victim notifications	3
How to register for notifications	3
Contact from mental health services	3
When you will receive notifications	3
How to stop receiving notifications	4
How to change your contact details	4
Getting more details about a person's leave or treatment	5
3. Detention in hospital for mental health treatment	6
Reasons for detaining people in hospital for forensic mental health care	6
Transferring people from prison to hospital	6
Providing forensic mental health services in hospitals	7
Managing special patients	7
4. Leave from hospital	8
Special patients who can get leave from hospital	8
Leave as a careful, step-by-step process	8
Approving and cancelling different kinds of leave	9
Giving information about leave to victims	9
Hospital leave is different from parole	10
When a person escapes or does not return from leave	10
5. Discharge and end of sentence	11
Reasons for discharging special patients from hospital	11
After a person is discharged but does not return to prison	12
6. More information and feedback	13
Alternatives to becoming a special patient	13
Who to contact if you have questions about a notification	13
How to provide feedback or make a complaint	14

Introduction

The Victims' Rights Act 2002 (the Victims' Rights Act) is a New Zealand law that details specific rights for victims of crime. Under this Act, a victim is anyone who has had an offence committed against them or suffered physical injury or had property lost or damaged because of an offence someone committed.

In the Victims' Rights Act, a victim can also be a parent or legal guardian of a victim who is a child or young person. Victims can be the immediate family members of someone who dies or is left incapable because of an offence someone committed.

A small subset of offenders and alleged offenders need to be assessed or treated for their mental health needs in a hospital. This happens under a law called the Criminal Procedure (Mentally Impaired Persons) Act 2003. These people receive treatment under the Mental Health (Compulsory Assessment and Treatment) Act 2002 as either a patient or a 'special patient'. But not all people receiving compulsory mental health treatment are offenders.

What you can expect from services that are helping you

If you are the victim of a person who needs mental health assessment or treatment in a hospital, you can expect fairness and respect from all people, organisations and government agencies involved in helping you, your family and your whānau.

You can expect courtesy, compassion and respect. You can expect your personal information to be kept private. You can also expect to receive high-quality services that are culturally appropriate. This means you get access to the appropriate expertise when and where you need it.

Under the Treaty of Waitangi, you have a right to partnership, protection and participation.

Your rights to information

If you are the registered victim of a person who is detained in hospital for assessment or treatment for their mental health needs, you have the right to be told if, and when, certain events happen for that person.

About this booklet

In this booklet, you'll find information about:

- what information (notifications) you can receive as a registered victim, or your representative can receive, about the person having mental health treatment
- what happens with treatment in and leave from hospital for this person if they began treatment through the justice system
- who to contact if you have any questions, want more information or want to give feedback or make a complaint.

2. Receiving information: victim notifications

How to register for notifications

If you are a victim of a crime, you may be able to register to receive notifications, which means you get information about the person who offended against you at specific points during their justice or rehabilitation pathway. Some victims are not eligible to register, and some victims do not wish to receive this information. New Zealand Police assess whether a victim is eligible to receive notifications after someone has committed an offence against them. Several agencies can help you apply to register, including the Police, the Department of Corrections and court victim advisors.

A victim can also choose to nominate a representative to receive information on their behalf. If you choose a representative, they will receive the information instead of you, but they have to agree to pass it on to you. Some people choose to have a representative so that they will always hear the information when they have family or whānau with them.

For more information about registering for notifications and the support available to victims, visit the Victims Information website www.victimsinfo.govt.nz or call freephone 0800 650 654.

Contact from mental health services

If you are a registered victim (or representative) and a mental health victim coordinator contacts you, it means the person who offended against you has been detained in a hospital for mental health assessment or treatment. The Police or Department of Corrections has passed your contact details, as a registered victim (or representative), to the health victim coordinator for the hospital.

This booklet is about the notifications you get about events that happen in relation to this hospital treatment. You may also be get other information about this person from other agencies such as the New Zealand Police, New Zealand Parole Board or Department of Corrections.

When you will receive notifications

If you are a registered victim (or representative), you will receive information about several different types of events for as long as the person is detained in hospital in relation to the

offence. The notification will tell you, a reasonable time before it happens, if the person is going to be:

- granted their first period of unescorted leave from the hospital grounds
- granted their first period of unescorted overnight leave from hospital
- discharged from hospital.

You will also get information, as soon as it is practicable to tell you, if:

- the person dies
- the person's sentence ends (where they received a sentence for the offence)
- the person escapes or is absent without official leave.

It is rare for a person to leave hospital without the correct approvals or to fail to return from leave. But if this happens, you will also be told when the person has returned.

You or your representative can receive the above information in many different ways, such as by registered letter, email, phone call or text message. Tell the health victim coordinator what your preference is for receiving information.

How to stop receiving notifications

If you (or your representative) no longer wish to receive the information described above, write to the health victim coordinator at the hospital, and they will remove your details from their records. If you do not want to receive any more information about the person at all, you can also ask the health victim coordinator to tell the New Zealand Police or the Department of Corrections on your behalf, and that agency will stop sending you notifications, too.

How to change your contact details

If your address, phone number, email address or any other contact details change, contact your health victim coordinator. They will update your records.

The health victim coordinators' contact details will be on the first letter you get from the mental health service. Health victim coordinators' contact details are also available at www.health.govt.nz/victimrights

You can also email victiminformation@corrections.govt.nz to change your contact details.

Getting more details about a person's leave or treatment

Specific information about a person in health care, such as details about their leave, treatment or progress, is confidential health information. The Privacy Act 1993 and the Health Information Privacy Code 1994 protect this information. No one can give you (or your representative) this information without the person's permission, except in certain limited situations where a law allows for this.

3. Detention in hospital for mental health treatment

Reasons for detaining people in hospital for forensic mental health care

Most people who commit an offence and experience a mental illness are not detained in hospital for mental health assessment or treatment. But some people are, for several reasons. Under the Criminal Procedure (Mentally Impaired Persons) Act 2003, a judge may order that:

- a person on remand must go to a hospital for psychiatric assessment of mental disorder
- someone who is found unfit to stand trial or not guilty of a crime due to insanity must be detained in hospital as a special patient for treatment under the Mental Health (Compulsory Assessment and Treatment) Act 1992
- a person must be detained in hospital for treatment after they are found guilty of a crime.

Sometimes a judge may order a person involved with an offence to be detained to receive treatment as an ordinary patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992. For more information about this, see section 6: More information and feedback in this booklet.

This booklet mainly focuses on special patients. Special patients are a special category of patient who forensic mental health services treat under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

To find out more about why people are detained in hospital for mental health care, see the victims' information factsheet 'Mentally impaired defendants' available at www.health.govt.nz/victimrights

Transferring people from prison to hospital

Prisoners who experience mental illness can receive mental health treatment in prison from health practitioners who work there. But in rare cases, some prisoners (less than 1 percent of the prison population) need mental health care in a hospital. Then they can

be transferred to a hospital. They only return to prison once their condition can be managed in prison.

A judge can also order the person to undergo assessment or treatment in forensic mental health services before sentencing or as part of their sentence.

Providing forensic mental health services in hospitals

Forensic mental health services care for and treat special patients. Five regional forensic mental health services are spread across New Zealand as part of the services of the Waitematā, Waikato, Capital & Coast, Canterbury and Southern district health boards. Capital & Coast also oversees a small forensic mental health service in Whanganui.

Forensic mental health services develop management plans to gradually settle people back into the community as treatment improves their mental health. They work in a variety of buildings, ranging from locked inpatient wards to unlocked wards and shared accommodation, on a hospital's grounds.

Treating mental illness can be an important step towards helping someone to address the reasons for their offending. In doing so, they can reduce their chances of offending in the future and significantly improve their wellbeing. Evidence for these benefits comes from a New Zealand study,¹ which looked at people found not guilty due to insanity between 1976 and 2006. It found only 6 percent of those people were reconvicted for violent offences within two years after they were discharged.

Managing special patients

The law requires forensic mental health services, when managing a special patient, to balance the special patient's rights under the Mental Health (Compulsory Assessment and Treatment) Act 1992 along with their treatment and rehabilitative needs against the safety of the public and the concerns of victims.

A responsible clinician is in charge of a special patient's clinical management. They have support from a multidisciplinary team of mental health clinicians, who help to regularly review the condition and progress of special patients.

¹ Skipworth J, Brinded P, Chaplow D, Framton C. 2006. Insanity acquittee outcomes in New Zealand. Australian and New Zealand Journal of Psychiatry 40(11): 1003–9. DOI: 10.1111/j.1440-1614.2006.01924.x

4. Leave from hospital

Special patients who can get leave from hospital

Most special patients can get leave from hospital. It is an important part of their rehabilitation. But the type of leave a patient can get and how long it is depend on their legal status and how far they have come along their justice or rehabilitation pathway. A person cannot get leave outside the hospital grounds, except in a medical emergency, if they are:

- detained before a decision on criminal charges has been made
- waiting for sentencing or appeal.

Leave as a careful, step-by-step process

Leave occurs carefully, step by step, as the patient improves. Special patients usually begin by having walks on the hospital grounds with forensic service staff escorting them. If appropriate, patients progress to unescorted ground leave and then to escorted and unescorted community leave.

Clinicians carefully consider any decision to allow a person to have leave beyond the hospital grounds. In general, they gradually decrease the level of staff supervision and increase the time the person can be away from the hospital. Clinicians make these decisions in line with the person's rehabilitation plan that the clinicians responsible for the person's care have developed. Any leave decisions take into account the person's mental state at the time of the leave and how well their recovery is progressing.

Most special patients use community leave to go to appointments, get hospital medical treatment, work, study, go to rehabilitation programmes or visit family. After a patient has had successful unescorted leave for increasingly longer periods, it may be appropriate to progress to a less secure setting. Some may move to an unlocked ward and eventually live in the community, often in supported accommodation or with family.

It is important to note that not all special patients are eligible for leave. Even if they can get leave, there is no requirement that they progress towards less secure conditions if a risk assessment or the patient's stage of recovery does not support this. Clinicians must make any decisions about leave with safety for the individual and the community in mind. The leave approval process is designed to identify, consider and manage risks. No person will be granted leave unless clinicians have completed a comprehensive risk management assessment and decide that the risks associated with leave are low.

Approving and cancelling different kinds of leave

Approval processes for leave vary depending on the person's legal status and how much progress they have made in their recovery. When a special patients' clinician requests the patient have access to the hospital grounds for the first few times, the Director of Area Mental Health Services (an appointed senior clinician in the forensic mental health service) decides whether to approve it. If the clinician approves this leave, escorts from the mental health service accompany the patient.

For short periods of leave (short-term leave) outside the hospital grounds, the Director of Mental Health, in the Ministry of Health, makes any approvals. Before approving leave, the Director of Mental Health must be satisfied that the conditions of leave are appropriate, the person's health is sufficiently stable and the risks that the person poses have been properly addressed. The Director of Mental Health can grant leave for any period up to seven days for certain special patients.

The Minister of Health receives applications for leave that is longer than seven days. Ministry of Health officials advise the Minister about the person's condition and risks before the Minister makes a decision. The first period of ministerial leave is usually granted for a period of six months, while later applications for ministerial leave tend to be for periods of 12 months (long leave).

It is important to remember that not all special patients are eligible for unescorted leave. Even those special patients who get leave must follow leave conditions, and their treating team monitors them regularly. If a special patient fails to follow their leave conditions or their mental state requires them to return to hospital, their leave may be cancelled. If this happens while the patient is on ministerial long leave, the Director of Mental Health may recommend that the Minister of Health cancels the leave.

Giving information about leave to victims

If you are a registered victim, you (or your representative) will be told when the person that offended against you is granted their first unescorted leave from the hospital grounds. In most cases, this leave will involve a short, unescorted walk to a course or programme near the hospital. Before they get this kind of leave, the person has usually had a number of escorted leaves into the community already.

You (or your representative) will also be told when the person is granted their first unescorted overnight leave from hospital. You do not have the right to be told of any later instances when the person has been granted leave.

For more information about leave for special patients, refer to *Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services* on www.health.govt.nz/victimrights

Hospital leave is different from parole

Both parole and hospital leave decisions are based on a comprehensive decision-making process that balances the needs of the individual with the safety of the public.

However, they differ in their purpose, length of time and conditions. Because of this, an assessment of the risks of short-term leave is fundamentally different to an assessment of the risks of parole.

A person may not be an appropriate candidate for parole but may be an appropriate candidate for short-term leave from hospital.

When a person escapes or does not return from leave

Special patients are closely supervised and are not able to leave forensic services or travel overseas without permission. Every special patient granted unescorted leave from hospital has an alert in place that prevents them from leaving New Zealand without permission from the Minister of Health.

It is rare for a special patient to leave the hospital without permission. If it happens, the service follows protocols to help get the person back safely to hospital as soon as possible. This includes contacting the Police, Ministry of Health and registered victims.

Protocols also apply if a patient receiving treatment under the Mental Health (Compulsory Assessment and Treatment Act) 1992 leaves hospital without permission.

If you are a registered victim, you (or your representative) will get information, as soon as it is practicable to do so, if the person leaves hospital without the correct approvals or fails to return from leave. You (or your representative) will also be told when the person has returned to hospital.

Usually if you are a victim with an appointed representative, the representative receives notifications. However, as a victim, you could be contacted directly if your offender is away from hospital without the correct approvals and the health victim coordinator thinks there is a risk to your safety that can't be managed by informing your representative.

5. Discharge and end of sentence

Reasons for discharging special patients from hospital

If a person is detained as a special patient in a hospital for mental health care, they can be discharged from the hospital for reasons such as the following.

- The person was previously found unfit to stand trial but now has become fit to stand trial and the Attorney-General makes directions about their legal status.
- The person was previously found not guilty due to insanity or unfit to stand trial as a special patient. Now the Minister of Health decides that detaining them is no longer necessary because they are no longer a serious risk to themselves or the public.
- The person was previously found unfit to stand trial and now has reached the maximum period of detention.
- The person had a prison sentence and that sentence has now expired.
- The person was previously transferred from prison to a hospital for mental health care. Now clinicians consider they are well enough to be transferred back to prison to continue to serve their sentence.

As a registered victim, you (or your representative) will be told if any of the above events occurs.

For special patients who were found not guilty by reason of insanity, the Minister of Health may consider whether their legal status should change, taking into account whether their detention as a special patient is still necessary to safeguard the interests of the person or the public. If it is decided that this safeguard is no longer necessary, which is usually after the person has spent several years successfully living in the community on ministerial long leave, the person's status as a special patient may end.

Forensic mental health services send applications for changes of legal status to the Director of Mental Health. After careful consideration, the Director makes a recommendation to the Minister of Health about a person's legal status.

After a person is discharged but does not return to prison

Every person's unique circumstances influence the kind of support they receive after they are discharged from hospital. It is important to know that special patients are only discharged from hospital at the point when it is decided that they no longer need to be a special patient, and so their status as a special patient ends.

For most people, discharge from their special patient status does not greatly change the kind of support they receive from mental health services. For example, most special patients who have been found not guilty due to insanity have been living in the community on leave for a long time before their status changes. Many people discharged from special patient status remain under compulsory mental health treatment orders for a long time after their discharge. That means they continue to have follow-up support from mental health services and regular meetings with their treating team.

For more information about the management of special patients, refer to *Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services* on www.health.govt.nz/victimsrights

6. More information and feedback

Alternatives to becoming a special patient

When a judge decide someone's mental disorder means they are unfit to stand trial or not guilty due to insanity, the judge then has to decide what to do with that person. Health and other professionals help in making this decision by providing advice. Usually the judge decides to make the person a special patient. But sometimes the judge orders that a person is to be either:

- treated as a patient under the Mental Health (Compulsory Assessment and Treatment Act) 1992 or
- immediately released.

If the person is immediately released or treated as a mental health patient in the community, victims are not eligible to receive health notifications about them.

Victims can receive notifications, however, where the judge decides a person's mental disorder means they were unfit to stand trial or not guilty due to insanity and orders that the person be treated as a mental health patient in a hospital (even if they are not being treated as a special patient). The oversight process for patients is different to the process for special patients. For patients, the responsible clinician is in charge of decisions about leave from hospital and discharge from inpatient status.

Who to contact if you have questions about a notification

If you have any questions about a notification you have received, you (or your representative) can contact the health victim coordinator who is responsible for sending you notifications. You will find the contact details for the health victim coordinator in the first contact letter you get from the mental health service.

Visit www.health.govt.nz/victimrights for:

- details on how to apply to be a registered victim
- contact details of health victim coordinators
- information about the treatment of special patients, victims' rights and support for victims.

For more information on support services that may be able to help victims:

- phone the Victims of Crime Information Line on 0800 650 654
- visit www.victimsinfo.govt.nz, which also includes the Victims' Code in full.

For more general information about special patients, phone the Ministry of Health on (04) 496 2000 and ask for the Office of the Director of Mental Health and Addiction Services.

How to provide feedback or make a complaint

If you think a mental health service has failed to meet your rights or has not given you the standard of service you expect, you can contact the health victim coordinator or the Director of Area Mental Health Services of the hospital (district health board) you are dealing with.

You can also contact the Director of Mental Health by:

- writing to:
Office of the Director of Mental Health and Addiction Services
Ministry of Health
PO Box 5013
Wellington 6145
- emailing:
info@health.govt.nz

You can also give feedback and make complaints through the Victims Information website www.victimsinfo.govt.nz

If you would like any cultural or other help with making a complaint, please contact the Victims of Crime Information Line on 0800 650 654 or the agency you are complaining about for advice on who can help you.