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Section I General Provisions

§ 1 (fn 3) Objectives

(1) Measures of rehabilitation and safeguarding in a psychiatric hospital or a centre for drug addiction are intended to enable the patients concerned by way of treatment and care (therapy) to live a life that is integrated in the community. The safety and the protection of the general public and personnel of the institutions against further material and unlawful acts should be guaranteed. Therapy and placement have to make consideration for educational requirements. They are supposed to stimulate and improve the patients' cooperation and sense of responsibility with the best possible approximation to the general conditions of life and work.

(2) To support therapy and integration the institutions shall cooperate with suitable persons, organisations, public authorities and institutions of science and research.

(3) Even after the release therapy and counselling shall be continued with the patients' consent and in consultation with the supervisor of conduct in particular, the legal custodians, the probation supervisor, the free-lance welfare work, the social welfare authorities, the social-psychiatric service of the subordinate health authority responsible, the medical and non-medical therapists plus the authority responsible for the cost. To ensure continuity in the treatment of the person concerned arrangements for the aftercare are offered and provided for. The institutions have the obligation to mediate aftercare measures under the conditions of sentence 1. Inasmuch as no other suitable offers will be available, patients will be admitted without undue delay, upon their own request, in particular in cases of crisis. The cost must be considered in accordance with § 30 as detailed in the ordinance.

§ 2 Institutions

(1) The institutions have to be laid out in a way that a correct therapy for the patients will be guaranteed. Rooms for the treatment, the stay during the rest and leisure time, for occupational or work therapeutic and educational measures and other reasonable occupations plus common-rooms and visitors' rooms have to be designed for the specific purpose.

(2) The rooms must be suitable for a healthy life-style and sufficiently equipped with heating and ventilation system, floor space and window area.

§ 3 (fn 3) Quality Assurance, Safety Standard

(1) The quality of the treatment in particular, the treatment results and the care processes must be guaranteed. The authority responsible for the institutions shall implement measures to ensure quality on a regular basis.

(2) Section 1 sentence 2 shall apply accordingly with respect to measures of protection.

(3) For the progress in quality of the hospital treatment enforcement, in particular with respect to manning, agreements shall be concluded between the Land and the authorities responsible for the institutions in compliance with § 29 para. 2 to 4, inasmuch as the ordinance in compliance with § 30 has not stipulated

final arrangements.

§ 4 Advisers

(1) The authorities responsible for the institutions of hospital treatment enforcement shall appoint a board of advisers for each location.

(2) Tasks of the board of advisers shall be the counselling of the institution in matters of concept and organisation of the hospital treatment enforcement, the support of the management of the institution, the assistance in the reintegration of the patients supporting the understanding for and the acceptance of the tasks of the hospital treatment enforcement in the public.

The members of the boards of advisers shall fulfil their tasks in an honorary capacity.

(3) The boards of advisers shall be made up from persons from different groups of the society. Predominantly they shall be inhabitants of the municipality where the institution is located. The municipal council may nominate a maximum of half of the members of the board of advisers in compliance with sentence 2.

(4) The members of the board of advisers may inform themselves about matters of content and organisation of the execution of the hospital treatment enforcement. They may visit the institution. They have no right to inspect documents. The advisers take no part in making decisions about individual patients.

(5) The authority responsible for the institutions shall stipulate the details in internal rules.

(6) Inasmuch as institutions of the hospital treatment enforcement are operated by denominations or organisations of equal status or related to them, they shall define such rules under their own responsibility. The same shall comply with the objectives of this section.

II. Section Patients' Rights

§ 5 Restrictions

The patients are subject to the restrictions of their liberty provided for in this Act and on the base of this Act. To the extent where the act does not make a specific stipulation, the patients may be subject to restrictions only, which are indispensable for the prevention of a serious disturbance to the living of a settled life or the safety.

§ 6 Admission

(1) At the time of their admission the patients are instructed about their rights and duties both verbally and in writing. A person in the position of their trust shall be notified without undue delay about the admission. Sentence 1 shall be applicable for the person in the position of their trust, as appropriate.

(2) The patients shall be examined without undue delay. They shall be presented to the medical or psychotherapeutic management of the institution no later than on the next work day, in case of wards, which are independent in their special discipline, to the medical or psychotherapeutic management of the

ward (therapeutic management).

(3) The patients shall be supported without undue delay in the implementation of necessary measures for their families and relatives in need of help plus their financial affairs. If patients are unable to care for their financial affairs themselves the institution of custody (legal representation) shall be proposed to the guardianship court.

§ 7

Personnel Custody, Search

(1) Objects of the patients, in particular keepsakes of personal value and objects for further training or leisure time shall be left to them, inasmuch as neither the purpose of the placement nor the settled life of cohabitation or the safety will be endangered. Clothing, which identifies the institution, is inadmissible.

(2) Other objects, which have been brought along, shall be sent to persons nominated and with the cost born by the patients or kept. Inasmuch as this might not be possible or expedient, the institution may dispose of the objects for them. Objects of low value or dangerous objects may also be destroyed, inasmuch as any other utilisation can be excluded.

(3) The patients may purchase and contribute objects during their stay. Inasmuch as therapy, the living of a settled life of cohabitation or safety will require this, the contribution or use of objects may be excluded or prohibited.

(4) Objects, which in the hand of the patients might impair safety requirements, may be taken away or made unusable.

(5) For compelling reasons of the therapy, living of a settled life of cohabitation or safety of rooms, patients and their personal affairs may be searched. The patients may be searched in the presence of a third person only, their personal affairs only in their own presence or that of a third person. For any corporal search in combination with undressing § 84 para. 1 sentences 2 and 3 plus § 84 para. 2 sentences 2 and 3 Execution of Sentence Act shall apply as appropriate.

§ 8

Correspondence, Parcels, Newspapers

(1) The patients have the right to send and receive letters.

(2) For compelling reasons of the therapy, settled life of cohabitation and safety the correspondence may be monitored and letters stopped or kept. Senders plus the patients shall be notified without undue delay. Letters may be stopped in particular, when

1. their passing on in knowledge of their contents would carry out an act, which is punishable under the Criminal Code or with an administration fine,
2. their passing on would endanger the integration of other patients after their release,
3. it has been worded in secret writing or without compelling reason in another foreign language or
4. their passing on might be cause for material disadvantages on part of the patients or third parties.

(3) There may be no stop of the correspondence with the legal representations, lawyers, legal defence, notaries, with members of parliament of the Federal Republic and of the Land having jurisdiction over the place of residence or the institution itself, its members, the authorities responsible for the institutions plus their complaints department, the competent public authorities, the courts or public prosecutor offices in the Federal Republic of Germany, the Federal and/or Land Commissioner for Data Protection plus the European Commission for Human Rights in Strasbourg. Neither the letters of the patients to the people and institutions specified in sentence 1 nor the correspondence with the counsel for the defence will be monitored.

(4) The above-mentioned provisions are also applicable to telegrams, parcels, small parcels, individual newspapers and magazines. Parcels and small parcels shall be opened in the presence of the patients, unless there are compelling reasons to the contrary. § 7 shall apply as appropriate.

§ 9

Visits, Telephone Calls, Telecommunication

(1) The patients may receive visits on a regular basis. Time and duration shall be settled in compliance with uniform principles set down by the rules of the house.

(2) For compelling reasons on grounds of the therapy, the settled life of cohabitation and safety visits may be monitored, broken off, restricted, prohibited or made dependent on a search of the visitors. The conversation may only be monitored, should this be indispensable in an individual case for reasons of treatment or safety or rules of the community in the institution. Visits of the counsel for the defence may neither be monitored nor prohibited.

(3) Visits of the legal representations or the lawyers, notaries acting in any matter for the patients may not be prohibited. Writings and other documents, which these people and/or the counsels for the defence carry along, will not be inspected for content. The handing over of other objects, however, requires the inspection and permission of the institution.

(4) Patients may make telephone calls at their own cost in compliance with the appropriate application of the sections 1 and 2. The institution, under the conditions of the sentence 1, may allow other means of telecommunication. § 8 para. 2 sentence 2 applies accordingly.

§ 10

Leisure activity

(1) Offers for further training, sports and social activities shall assist the patients in arranging their leisure time.

(2) Any restriction in the leisure activities is permissible on grounds of compelling reasons of the therapy, settled life of cohabitation and safety.

§ 11

Classes, Occupational Integration

(1) Making due consideration for the organisation in the institution of placement and the special skills of the patients they must be enabled in particular to obtain a school leaving qualification, pursue further training, get a professional or vocational training, participate in retraining measures or practise a profession or vocation.

(2) Reports or certificates of attendance shall contain no mentioning of the placement

(3) For the purpose of integration an occupational relation outside of the institution may be permitted subject to the proviso of § 18.

§ 12 Supplementary Health Assistance

(1) The patients who have no health insurance or insufficient health insurance have a right to get health treatment, precautionary medical examinations and other measures in appropriate application of the Fifth Volume Code of Civil Law (CCL V) - Statutory Health Insurance - with exception of §§ 23, 24, 40, 41 and 76 CCL V from the authority responsible for the institution. In the case of a health treatment in accordance with § 39 CCL V the authority responsible for the institution shall specify the suitable hospital also making consideration for safety requirements.

(2) With the exception of an emergency treatment during a leave the patients have a right to get medical treatment and care in the institution only, which has spoken in support of the leave, and to an absorption of costs for the therapeutic treatment, which originates from a direction given within the frame of easing the restrictions of the placement or a vacation, unless such costs can be claimed from a health insurance company.

§ 13 Religious Practise

(1) The patient may neither be refused pastoral care nor participation in events inside the institution. Patients may possess, to a reasonable extent, principal texts and other ritual objects within the frame of their respective denomination or ideological confession.

(2) Patients may be admitted to religious events of another denomination or other ideological confession taking place inside the institution, when their respective pastor has agreed to this.

(3) Patients may be excluded from events inside the institution for compelling reasons of their therapy, the settled life of cohabitation and safety. The pastor shall be informed about this before. The possession of ritual objects and texts may be restricted on grounds of the reasons provided in sentence 1.

§ 14 Work, Income

(1) In accordance with the progress in their treatment and their abilities for cooperation the patients are to be urged to take care of themselves and of cleaning their accommodation and therapy rooms. For any occupation within the frame of a work therapy the patients will be entitled to a reward for their work. The same shall be specified by the authority responsible for the institution making due consideration for the work results and usability. The patients will be rewarded with a reasonable pay for their work. The amounts shall be notified to them in writing.

(2) The patient's contribution to the cost is subject to the direction of § 10 of the Administration of Justice Scale of Costs.

(3) The bridging allowance shall be built up no more than up to the level of that amount, which has been exempted from use or exploitation in accordance with the rules of the Federal Social Security Act with respect to the use of one's own assets to help in special situations of life. The bridging allowance is intended to secure the necessary living expenses for the patients and their dependents for the first four weeks after their release.

(4) The amount of cash for one's own disposal (pocket money) shall be paid as for mentally ill and psychologically or mentally retarded people.

(5) The institution shall pay interest on the bridging allowance. The amount of the interest shall be at least the interest rate for credit balances with a legal period of notice.

§ 15

Enforcement Plan, Institutions

(1) The ministry responsible for the hospital treatment enforcement in agreement with the ministry responsible for the administration of justice and having heard the responsible committee of the Land Parliament and the authority responsible for the institutions shall set up an enforcement plan for the hospital treatment enforcement. The same shall stipulate the respective responsibilities of the institutions. Separate groups shall be set up in particular for patients requiring a general psychiatric treatment, those who demonstrate serious disturbances of their personality, tend to drink excessive amounts of alcohol or consume other intoxicating substances, mentally retarded, and patients up to 24 years old.

(2) Patients may also be admitted or transferred to another institution than the one stipulated in the enforcement plan upon their petition or that by the authority responsible for the institution, should this be required by their therapy, for their integration, safety or for any other important reason of cohabitation. The authority responsible for the enforcement shall decide about the admittance. Before any transfer to an institution of another authority, which is responsible, the authority responsible for the enforcement shall be heard. In all other cases it must be informed.

III. Section

Planning and Arranging the Placement

§ 16 (fn 6)

Therapy and Integration Plan

(1) After the admission an individual provisional therapy plan shall be prepared for the patient without undue delay. An individual therapy and integration plan, which makes consideration for the personality, age, level of development and the standards of living, must be available no later than six weeks after the admission. The plan shall be discussed with the patient and the legal representation.

(2) The therapy plan and the integration plan relate mostly to the kind of placement, the allocation to treatment groups, medical, psychotherapeutic and special educational treatment, care, classes, occupation and work therapy, work, measures of easing the restrictions and integration. The plans shall be reviewed every six months at the latest to be adapted to the therapeutic progress of the patient. In particular after a prolonged open placement or leave of the patients that has stayed without complaint it must be reviewed, if the therapy could be continued in institutions outside of the hospital treatment enforcement or when the necessary aftercare can be guaranteed after an interruption of the enforcement by way of a placement for probation in combination with impositions and instructions. In suitable cases the management of the institution shall propose to the law enforcement authority without undue delay the interruption of the hospital treatment enforcement or the reversal in the sequence of the enforcement. In the enforcement of hospital treatment enforcements in accordance with § 64 of the Penal Code the management of the institution shall inform the law enforcement authority without undue delay, when sufficient expectations for a successful treatment do not or no longer exist for an individual patient.

(3) No later than after the expiry of three years at each time a review shall be made, if a release of the

patient may be proposed. Medical or non-medical experts shall assess the patients. These experts may not work for the institution. They will be paid a remuneration in applying the Administration of Justice's applicable Law for Remuneration and Compensation. In case the opinions from medical experts come first a non-medical expert shall prepare a second opinion and vice-versa. The institution shall inform both the authority responsible for such institution and the law enforcement authority about the result of the expert assessment and this without undue delay.

(4) The competent chambers of therapeutic professions keep lists about experts, who are capable of performing the tasks in accordance with section 3. They shall define quality criteria in agreement with the authorities responsible for the institutions and the competent authority of the Land.

§ 17 Treatment, Hygiene

(1) The patients receive the required medical, social therapeutic and psychotherapeutic treatment. The treatment must be explained to them. They have to support the necessary measures to protect their own health and for their own hygiene.

(2) Under the proviso of the stipulations provided for in sections 3 to 5 the treatment requires the patient's consent. Should the patient be unable to understand the reason, meaning and consequence of the treatment, where such consent is required, or fail to behave in accordance with this understanding, the consent must be required from the respective legal representation.

(3) Without their expressive consent or that given by their legal representation the treatment of patients will be permissible only in case of danger to their life, a serious risk to their health or when the health of other people is in danger. For compelling reasons of treatment a tying of hand and/or foot may be ordered by a medical practitioner only. Any tying that continues for more than 72 hours requires at each time the permission of the authority responsible for the institution.

(4) Apart from the cases described in the sentences 2 and 3 the enforced corporal examination is permissible only to protect the health and for purposes of hygiene, when there is no corporal intervention related to it. A force-feeding is permissible whenever the same will be required to fend off a danger to life or a serious threat for the patient's health. Neither the psychiatric hospital nor the centre for drug addiction has an obligation to execute the force-feeding, as long as a free exercise of will can be assumed for the patient.

(5) Measures in accordance with the sections 3 and 4, which are carried out without the patient's consent or that given by their legal representation, may be ordered by the therapeutic management only, in case of them being prevented by their locum and may be carried out by medical practitioners only. The performance of first aid is permissible even without the prerequisites of sentence 1, whenever no medical practitioner can be reached in good time or where any delay would entail a danger to life.

§ 18 (fn 3) Degree of Restriction of Liberty

(1) Duration and scope of the restriction of liberty are subject to the success of the therapy. The same shall be reviewed and adapted under the direction of the therapy and integration plan. Consideration must be made for threats, which may be caused by the patients. Any measure easing the hospital treatment enforcement has the principal purpose of achieving the treatment. For patients who, on grounds of the treatment purpose, may not benefit from a measure easing restrictions, accompanied leaves may be allowed for important reasons. Important reasons can be, in particular, the settlement of family and business matters plus the attendance at court hearings. The therapeutic management shall decide about all

measures easing the hospital treatment enforcement and their termination, inasmuch as nothing has been stipulated in a different way, as herein below.

(2) Measures easing the hospital treatment enforcement include in particular

1. accompanied leave or leave on their own within one and the same day,
2. leave of absence,
3. regular occupation outside of the institution with or without supervision and
4. non-supervised hospital treatment enforcement.

(3) Measures easing the restrictions may be combined with conditions and instructions, in particular

1. to submit himself or herself to the supervision of a specified person,
2. to obey orders with respect to place of residence and ways of behaving outside of the institution and
3. to report in person at defined locations and at defined times.

(4) Prior to the allowance of any measure of easing the hospital treatment enforcement in accordance with section 2 nos. 1 to 4 the law enforcement authority shall be heard, inasmuch as it has directed to this respect in the admission request. For patients who, with respect to their original offence, in particular in case of criminal offences like killing, serious violence, and sexual offences, their disturbance and the course of their treatment give rise to specific problems in the assessment of their risk potential, where a supervision by personnel of the institution cannot be guaranteed, the law enforcement authority must be consulted prior to the first measure of easing the hospital treatment enforcement. Inasmuch as it might be required, a short expert opinion shall be sought in accordance with the direction of § 16 para. 3. Further details concerning the involvement of the law enforcement authority in the decisions about measures of easing restrictions may be ruled by the ministry responsible for the hospital treatment enforcement in agreement with the ministry responsible for the administration of justice.

(5) Relaxations of the hospital treatment enforcement may be terminated, when

1. circumstances arise or are become known later that would have justified a refusal,
2. the patients abuse the easing of restrictions or
3. fail to follow conditions and/or instructions.

(6) The leave for reasons of treatment interrupts the enforcement only in a case, where patients abuse such a leave to commit unlawful acts or evade the hospital treatment enforcement. In case of a leave of more than 21 days in a calendar year the authority responsible for the institution and the law enforcement authority shall be informed.

§ 19

Rules of the House

The authority responsible for the institution shall prepare and publish specific rules of the house. The

authority may delegate these tasks totally or in parts to the institution with the direction that the latter will prepare and publish specific rules of the house with the formers consent. The rules of the house shall include more detailed provisions about the personal perception of patients' rights and duties in accordance with this Act making consideration for the actual circumstances in the institution, and this in a wording that is easily understood. The same to be handed out to the patients and their trust persons as soon as possible after the admission and explained when needed. Rules of the house shall be submitted to the authority of the Land responsible for the purpose of information.

§ 20

General Safeguards, Arrest

- (1) Any intervention in the rights of patients must be recorded in writing and substantiated. Patients, their legal representations, and their lawyers may inspect these documents. With the patients' consent the counsel for the defence may inspect all documents, which are kept about them in the institution. Opinions delivered by the counsel for the defence shall be enclosed with the files.
- (2) Investigations through the police records department shall be in compliance with the principal rules of the Police Law or Law of Criminal Procedure. Pertinent documents shall be kept separate from the personnel files and patient files, which are to be destroyed at the time of their release.
- (3) When patients stay outside of the institution without permission, the same may bring them back or have them arrested.
- (4) The institution shall report to the competent authority of the Land about escapes, their attendant circumstances and the measures implemented for the patient's renewed capture. An escape exists whenever a patient has left the Institution without permission or stays outside of the institution longer than permitted.

§ 21

Special Safeguards

- (1) In case of a substantial risk for the settled life of cohabitation in the institution, in particular in case of threats to their own well-being or risk of escape, isolation, observation during the night, deprivation or withholding of objects, deprivation or restriction of staying in the open air may be ordered, inasmuch and as long as may be required.
- (2) The special safeguards mentioned in section 1 require the involvement of the medical practitioners and the supervision. Any isolation continuing for more than one week requires the permission of the authority responsible for the institution as well.
- (3) Any action in accordance with section 1 shall be notified without undue delay to the counsel for the defence, the lawyer or the legal representation of the person concerned.
- (4) For the reasons mentioned in section 1 imperatively required medical and psychotherapeutic intervention may also be proceeded with. § 17 para. 5 shall apply as appropriate.

§ 22

Direct Constraint

- (1) The medical, therapeutic, nursing and other personnel of the institution entrusted with the supervision may apply direct constraint in case of a substantial exposure to danger, whenever this will be required, to maintain public safety or order or the safety or order in the institution.

(2) A direct constraint may be applied for other persons than the patients, when they undertake to liberate patients or enter unlawfully into the premises of the institution or when they continue to stay there without permission in spite of a request to leave.

(3) Any direct constraint must be threatened. The threatening may only be done without, when the circumstances will not allow this, in particular, when a direct constraint must be applied immediately to prevent an actual exposure to danger.

(4) From several possible and suitable measures of the direct constraint the one measure shall be selected, which is most likely to impair both the individual and the general public the least possible. Any direct constraint shall be avoided, whenever it is recognisable that the expected damage will be in no relation to the aspired success.

§ 23 Security Officer

In support of the special requirements for the safety of the institutions the ministry responsible for the hospital treatment enforcement shall specify by way of an ordinance with the consent of the competent committee of the Land Parliament the details, in particular those about the qualification of the safety officers, their tasks and scope of responsibilities plus the specification for the implementation of pilot schemes.

§ 24 Orders

(1) No order may be given or followed when any right of the patients would be violated or criminal offences committed. Should employees nevertheless give or follow such orders they will be responsible for it, when they recognise the violation of a right or would have had to conclude so from the circumstances.

(2) Reflections about the legality of orders shall be explained to the person in charge or his/her superior, inasmuch as this will be possible under the circumstances.

§ 25 Expenditures

(1) Patients who cause expenditures for the institution by way of non-permitted leaves, self-inflicted wounds, injuring other patients or employees or damage to property shall compensate such expenditures, inasmuch as they are responsible for it.

(2) Claims may be enforced only to an extent that therapy and integration of the patient will not be impeded.

§ 26 (fn 3) Data protection

1) Details about personal or factual circumstances of the patients (data) may only be collected, stored, used or transmitted, inasmuch as

- a) this will be required by law for the lawful completion of the tasks,
- b) another legal provision has allowed for this or

c) the patients have consented to this.

(2) The transmission of patients' data is also permissible, inasmuch as this will be required

- a) to perform another legal duty,
- b) to prevent substantial disadvantages for the public interest or an immediate danger that would otherwise threaten the public safety or to fend off another actual danger for life, corporal intactness or personal liberty of the patients or third parties
- c) to prevent and prosecute criminal offences or administrative offences
- d) to settle and enforce claims on grounds of measures in accordance with this Act.

(3) As a transmission shall also be considered the passing on of patients' data to any person in other organisational units of the institution or public offices not directly involved with the enforcement of measures of rehabilitation and/or security.

(4) Persons or offices where data have been transmitted to in a permissible way, may use these for the purpose they have been transmitted for only. Over and above and notwithstanding other data protection rules they have to keep the data secret to the same extent as the institution or public office that has transmitted them.

(5) Medical practitioners plus psychological psychotherapists are the only ones who may inspect patients' files. There is no need to release the doctor-patient confidentiality for the transmission and the inspection of patients' files.

(6) § 203 of the Penal Code has to be applied. Over and above that § 2 para. 1 sentence 2, §§ 3, 4 and 6 to 8 plus § 11 para. 2 of the Law about the Protection of Personal Data in the Public Health Sector of 2 February 1994 (OG. NRW. p. 84) shall apply as appropriate in the version valid at the time.

§ 27 (fn 4)

§ 28 (fn 4)

IV. Section Competences, Cost, Supervision

§ 29 Competences

(1) The Land is competent for all measures of rehabilitation and security in a psychiatric hospital or centre for drug addiction.

(2) The carrying out of this task with exception of the erection, alteration and change of use of buildings for the hospital treatment enforcement may be entrusted to third parties, but to private parties only in parts. Inasmuch as the Land makes no use of the option for an entrustment identifying no other authority by ordinance in accordance with § 33, the director of the Landschaftsverband will be the competent state administrative authority. In the case of sentence 2 the Landschaftsverbände have to make available the required service personnel and existing institutions. The cost thereof will be reimbursed as directed by § 30 and the ordinance relying thereon.

(3) Any entrustment of a legal person under public law in accordance with section 2 is done after hearing

the competent committee of the Land Parliament ruling about kind and scope of the treatment in accordance with § 17 para. 1 sentence 1 and the placement. The Ministry competent for the hospital treatment enforcement has been entitled to negotiate with the party being entrusted with the task and to agree on the details by way of an agreement under public law.

(4) On a one-by-one basis private authorities responsible may be entrusted with sovereign authority to carry out defined tasks, as required.

(5) The therapeutic management implements the measures for the hospital treatment enforcement, inasmuch as nothing has been stipulated to the contrary in this Act or on grounds of this Act.

(6) Inasmuch as in the case of the sections 2 sentence 2 matters of self-government of the Landschaftsverbände will be affected during the erection, alteration and change of use of institutions or wards of the hospital treatment enforcement, the competent bodies under the ordinance for Landschaftsverbände must be heard.

§ 30 **Cost**

(1) The cost necessary for the hospital treatment enforcement in accordance with this Act are born by the Land, inasmuch as neither the social services nor the patients have to contribute to the reimbursement of the cost.

(2) To carry out the tasks in accordance with § 29 para. 2 to 4 the authorities responsible for the institutions receive an annual budget for the cost of personnel and materials for each institution or ward operated by them. Inasmuch as patients, as a result of their therapy progress are present in an institution, which is neither in its entirety nor with its wards ready for the hospital treatment enforcement, a lump sum expenditure will be paid per placement.

(3) The ministry responsible for the hospital treatment enforcement is authorised, after hearing the competent committee of the Land Parliament, to enact an ordinance in agreement with the ministry responsible for the administration of justice and the Ministry of Finance concerning

1. the definition of the accommodation and treatment charges for the psychiatric hospitals and centres for drug addiction active in the hospital treatment enforcement,
2. the standards and principals of the staffing requirements,
3. the accounting and bookkeeping duties of the institutions in accordance with section 2 sentence 1,
4. the assessment basis for the lump sum reimbursement of expenditures in accordance with section 2 sentence 2 and
5. the assessment and levying of pro rata reimbursements for the placement of patients from other countries.

The competent ministry in agreement with the ministries mentioned in sentence 1 shall enact the administrative provisions for the hospital treatment enforcement to carry out the sections 1 to 3.

(4) The Audit Office of the Land has been authorised to audit the use of the funds provided by the Land in the premises of the authorities responsible for the institutions in accordance with § 91 Land Financial

Regulations.

§ 31 (fn 3) Supervision and Responsibility

(1) The representative of the Land authorised for the hospital treatment enforcement manages the supervision of the hospital treatment enforcement. The highest supervisory authority is the ministry responsible for the hospital treatment enforcement. It manages the administrative supervision and field supervision of the authorised representative of the Land and the personnel allocated to him/her. The competent ministry may transfer its authority in general to the authorised representative/s of the Land, unless a transfer has been excluded by this Act.

(2) The supervisory authorities have been authorised to carry out their tasks in particular,

- to enter and review the psychiatric institutions accommodating forensic patients during the regular times of treatment and care, to prevent impending risks for the public safety and order even outside of these times;

- to conduct a full inspection of the records kept by the institutions requesting information from the same at any time. The review of patients' files is subject to § 26 para. 5 and 6.

(3) Inasmuch as the director of the Landschaftsverband assumes the carrying out of the tasks in accordance with § 29 para. 2 sentence 2 acting as the administrative authority of the state, he/she will be subject to the administrative supervision and field supervision of the authorised representative of the Land. He/she has to observe the guidelines of the Land Government reporting about all occurrences that will be of importance to the Land Government.

§ 32 Visiting commissions

(1) In accordance with the Law about Measures of Assistance and Protection for Psychic Illnesses of 2 December 1969 (OG. NRW. p. 872) in the version valid at the time the visiting commissions are also competent for the institutions of the hospital treatment enforcement.

(2) The authority responsible for the institutions shall enable visits of the visiting commission and of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

§ 33 Rules of Implementation

The ministry responsible for the hospital treatment enforcement, after hearing the competent committee of the Land Parliament and in agreement with the ministry responsible for the administration of justice has been authorised to establish by way of ordinance the rules for

- the requirements for the equipment of the institution in accordance with § 2,

- the classes for the patients in accordance with § 6 para. 1,

- the monitoring, stopping, keeping or interdicting of letters, telegrams, parcels, small parcels, newspapers and magazines in accordance with § 8 para. 2 to 4,

- the appointment of the person responsible for data protection in agreement with the ministry

responsible for the protection of data,

- the regulation of visits, telephone calls and telecommunications in accordance with § 9,
- the exclusion from religious events in accordance with § 13 para. 3,
- the use of the bridging allowances in accordance with § 14 para. 3,
- kind and scope of reports in accordance with § 20 para. 4 and
- the special safeguards in accordance with § 21

and define the competent public authorities. It enacts the administrative provisions necessary to execute this Act. § 30 para. 3 sentence 2 remains unaffected thereby.

§ 34 (fn 3)

Fundamental Rights

This Act restricts the fundamental rights of article 2 para. 2 sentences 1 and 2 (corporal integrity and liberty of the person), of article 10 para. 1 (secrecy of letters, secrecy of the post, and secrecy of telecommunications), of art.13 (inviolability of the home) and of article 14 para. 1 sentence 1 (property) of the Basic Law. These fundamental rights may also be restricted on the base of the present Act.

V. Section

Tasks Outside of the Hospital Treatment Enforcement, Transitional Provision

§ 35

Placement in Accordance with the Code of Criminal Procedure and the Juvenile Court Act

Placements in accordance with § 81, § 126 a and § 453 c in combination with § 463 para. 1 of the Code of Criminal Procedure plus in accordance with §§ 7, 73 of the Juvenile Court Act shall be effected in suitable institutions. §§ 15, 29 and 30 shall apply as appropriate.

§ 36

Transitional Provision

The regulations concerning costs in accordance with § 22 a plus the organisational plan in accordance with § 13 and § 24 no. 2 in accordance with the Act about the enforcement of measures that take away the personal liberty in a psychiatric hospital and/or centre for drug addiction (Hospital Treatment Enforcement Act - HTEA) dated 18 December 1984 (OG. NRW. p. 14), last amended by law of 22 February 1994 (OG. NRW. p. 84), shall continue to apply for the Landschaftsverbände before the ordinance in accordance with § 15 para. 1 and § 30 para. 3 has been enacted. They will cease to be valid when the corresponding ordinances come into force.

VI. Section

Coming into Force

§ 37

Coming into Force

This Act comes into force on the day after its promulgation (fn 2). Simultaneously the

Hospital Treatment Enforcement Act dated 18 December 1984 (OG. NRW. p. 14), last amended by law of 22 February 1994 (OG. NRW. p. 84), will cease to be valid, as directed by the above § 36.

§ 38 (fn 5)
Obligation to Report

About their experience gained with this Act shall report to the Land Parliament before 31 December 2009:

The Land Government of
North Rhine-Westphalia

The Minister-President

The Minister of Finance

The Minister of the Interior

The Minister of Justice

The Minister for Construction and Accommodation

The Minister for Women,
Youth, Family and Health

- Fn 1** OG. NRW. p. 402, amended by Law of 11 June 2002 (OG. NRW. p. 237); article 63 of the Fourth Time Limitation Law of 5 April 2005 (OG. NRW. p. 332), coming into force on 30 April 2005; art VI of the Law of 5 April 2005 (OG. NRW. p. 408), coming into force on 5 May 2005.
- Fn 2** OG. NRW. issued on 15 July 1999.
- Fn 3** §§ 1, 3, 18, 26, 31 and 34 amended by Law of 11 June 2002 (OG. NRW. p. 237), coming into force on 29 June 2002.
- Fn 4** §§ 27 & 28 deleted by Law of 11 June 2002 (OG. NRW. p. 237), being effective as of 29 June 2002.
- Fn 5** § 38 attached by article 63 of the Fourth Time Limitation Law of 5 April 2005 (OG. NRW. p. 332); coming into force on 30 April 2005.
- Fn 6** § 16 para. 3 altered by art VI of the Law of 5 April 2005 (OG. NRW. p. 408 coming into force on 5 May 2005).

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Martin Bindhardt B.A. (CDN) has translated this Hospital Treatment Enforcement Act (HTEA) into the English language.
