

Survival **Guide**



**Confinement
in an Institution**

I N T R O D U C T I O N

This survival guide was written by the *Association des groupes d'intervention en défense des droits en santé mentale du Québec* (AGIDD-SMQ).

In June 1998, the *Act Respecting the Protection of Persons Whose Mental State Presents a Danger to Themselves or to Others* came into effect. The Act is quite complicated and it is not always easy to understand. That is why the AGIDD-SMQ decided to produce this guide. Since all 10,000 copies in the original run have been distributed, the AGIDD-SMQ obtained financial support from the *Ministère de la Santé et des Services sociaux du Québec* to reprint the guide. The Association took this opportunity to revise and improve the content of the guide. We wish to thank Ian-Kristian Ladouceur, LL.B., for his contribution to these improvements.

This guide is aimed first and foremost at people who are being hospitalized for psychiatric care against their will.

We hope it will clarify the different types of confinement and, above all, better enable people to ensure their rights are respected. It offers various tools that can help them either avoid confinement or get out of such a situation.

Of course, it's impossible to explain everything in this type of guide. That is why we encourage people to contact their local rights protection and advocacy group or legal aid office, or a lawyer if some aspects are still unclear.

*We hope it will be
useful reading.*

What is confinement in an institution?

Confinement in a health and social services institution means forced or involuntary hospitalization.

It's a special means, allowed by law, of taking away a person's freedom by placing that person in a hospital in order for a psychiatric assessment to be made or following a psychiatric assessment.

It is up to a judge to decide on the person's mental state. The judge must determine whether the person presents a danger to himself or herself, or to others.



DON'T FORGET

Confinement takes away my freedom.

...

I maintain all my other rights.

**For example, I am not obligated to undergo
any kind of treatment.**

**I can agree to continue
taking my medication,**

but refuse to take a new one.

Knock, knock, the police are at my door...

If someone calls the police, they can step in and take me to the hospital if they believe that I am, or that others are, in grave and immediate danger and that urgent action is necessary. The police do not need a judge's permission in an emergency.

They have the authority to take me away, but they are obliged to:

- Tell me where they are taking me.
- Inform me of my right to contact my family and my lawyer right away.



WHAT CAN I DO?

- ☞ **Stay calm and ask the police if there really is an urgent reason to take me to the hospital.**
- ☞ **Let them know there is no danger to myself or to others.**
- ☞ **Ask for the officers' names and take down their badge numbers.**
- ☞ **Ask them if they have a court order with my name on it, including my date of birth, or a written document from the hospital where they want to take me.**
- ☞ **Calmly explain the situation to them.**
- ☞ **Take the time to contact a friend and my lawyer.**
- ☞ **Ask them to contact a crisis intervention unit, if possible, or a community resource that I know of.**

What does a crisis intervention professional do?

The law provides a role for a crisis intervention professional. If such a service is available, that person is there to:

- Help me.
- Assess the situation or event.
- Determine whether there is a grave and immediate danger.
- Find solutions based on whatever consent I have given.



WHAT CAN I DO?

- ☞ **Once again, I can present my point of view regarding the fact that I am not a danger to myself or to others.**
- ☞ **Try to make the crisis intervention professional my ally by calmly explaining the facts.**
- ☞ **Try to come to an agreement with him or her in order to avoid being hospitalized against my will. To do so, I will agree to meet with him or her to describe my situation.**



REMEMBER

There must be a grave and immediate danger for them to take me to the hospital against my will.

For example: if my words, my actions or my behaviour is threatening to others or to myself; if I haven't eaten in several days; if I'm making a lot of noise at two in the morning, breaking things in my house and jumping on the floor loud enough to wake the neighbours; if I'm screaming and yelling to a family member over the phone that I want to kill myself.

However, talking to myself or to my fridge does not constitute a grave and immediate danger.

Preventive confinement

How long can I be hospitalized against my will and without a judge's permission?

- I can be taken to the hospital against my will by a peace officer, without court permission, if according to that officer or a crisis intervention professional, I present a grave and immediate danger to myself or to others.
- A doctor can keep me in the hospital for a maximum of 72 hours without a psychiatric examination if he or she believes there is a grave and immediate danger. That's what is called preventive confinement.
- After 72 hours, they must let me go, unless the hospital has obtained a judge's permission to keep me.
- If the hospital does not let me go after 72 hours of preventive confinement, that confinement is then illegal, unless it is a weekend or holiday.



WHAT CAN I DO?

- 👉 **Ask the director of professional services if I have, in fact, been put under preventive confinement by the doctor. If I have, then the director must be informed. If the director has not been informed, then the 72-hour period may not have begun.**
- 👉 **Contact a lawyer during this time. That way, if the hospital does not let me go, my lawyer can take the necessary legal steps.**
- 👉 **Contact my local mental health rights protection and advocacy group.**
- 👉 **Note the time and date of my arrival at the hospital or the time when I indicated to a member of the staff that I did not want to stay.**

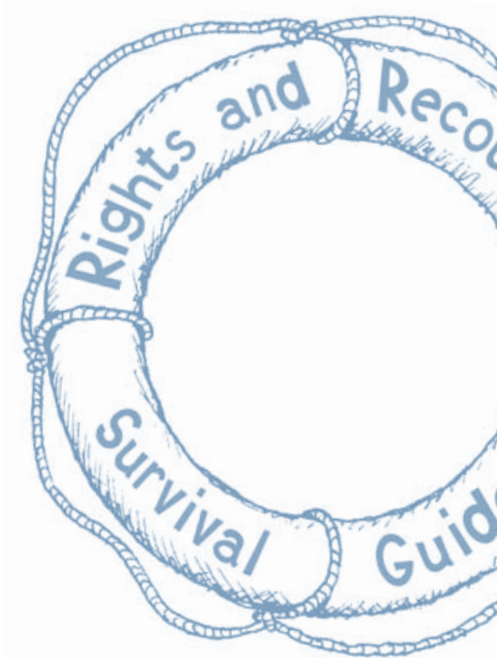
What does being served mean?

- Being served means receiving a document from a bailiff. This document informs me that a judge is going to hear a request about me. I must receive the document at least 24 hours before the hearing.
- I can be served with a request for temporary confinement in order to make me undergo a psychiatric assessment. I can also be served with a request for authorized confinement.
- A bailiff may bring me the document at home or at the hospital.
- Being served is always important because the document served informs me that a decision is going to be made about me and that this decision will affect my freedom.



WHAT CAN I DO?

- ✎ **When I am served, I can call a lawyer right away if I want to be represented.**
- ✎ **I can be in the courtroom to present my point of view, whether I have a lawyer or not.**
- ✎ **I can ask friends to testify that I am not dangerous, or simply ask them to come to court with me.**
- ✎ **I can also call my local mental health rights protection and advocacy group.**



Temporary confinement

Even though the law talks about temporary confinement, it does not define the term.

Temporary confinement is a confinement ordered by the court in order have someone who refuses to be examined undergo a psychiatric assessment.

For temporary confinement, the authors of the law have specified that, after the 72-hour period of preventive confinement has expired, the doctor may apply to the court to order a psychiatric assessment. In that case, the period may be extended by several days to allow time to prepare the request for a psychiatric assessment and to serve the person with notice (48 hours).

Once the court has ordered a psychiatric assessment, the results of which must be submitted to it within seven days of that order, a temporary confinement can only take place if two doctors have concluded that it is necessary. In that case, the doctors can keep a person confined without his or her consent and without the court's authorization for a maximum of 48 hours in addition to the 72 hours of preventive confinement.

Therefore, a person who refuses to undergo a psychiatric assessment can have his or her preventive confinement extended by seven additional days if you count the 72-hour period, the 48-hour period for serving notice and the 48-hour period for which the doctors can keep a person without authorization. As well, all this can fall on a weekend or a holiday.



WHAT CAN I DO?

- 📌 **Note the dates and times of psychiatric examinations and the names of the psychiatrists.**
- 📌 **Note important events.**
- 📌 **Remember that everything I say to the hospital staff, and everything I do, can be used to assess the danger I pose. For example, statements that are seen as threatening or aggressive can be used to prove that I am dangerous.**



Authorized confinement

Confinement authorized by the court is based on the doctors' assessment of a person's dangerousness.

The assessment of a person's dangerousness and the length of confinement are at the court's discretion.



I HAVE TO APPEAR IN COURT. WHAT CAN I DO?

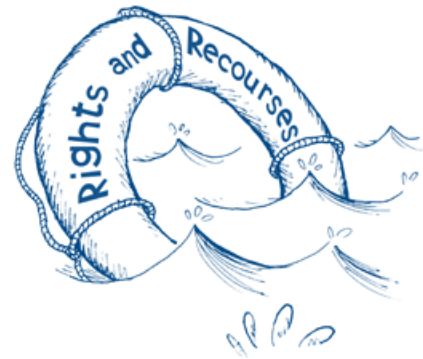
- Stay calm at the hospital.
- Contact my local mental health rights protection and advocacy group, a lawyer and/or legal aid.
- I have the right to be heard by a Court of Québec judge in order to present my point of view, whether I have a lawyer or not. Someone from the hospital must go to court with me if I want to contest my confinement.
- I can also have witnesses testify that I am not dangerous.
- I can also try to get a counter-opinion from an expert.

DON'T FORGET

If I am not present in the courtroom, the only opinions the judge will base his or her decision on are those of the two psychiatrists.

WHAT HAPPENS AT THE COURTHOUSE?

- I have the right to a lawyer who will defend me in court. This service is free if I am eligible for legal aid.
- I must tell the judge and the hospital's lawyer that I want to be represented. This is important. If I haven't reached a lawyer, I can ask for a postponement, but that means I will have to stay at the hospital until the hearing.
- The hospital's lawyer presents his or her evidence, which consists of the two psychiatric examinations. A psychiatrist may be present to provide explanations. The lawyer can also call on other witnesses. For my part, I can ask people to come and testify in my defence.
- Then it's my turn to explain the facts I am using to show that I am not dangerous. My preparation and my presentation are very important.



Preparing my defence

- It is important to prepare before appearing in court or before the Administrative Tribunal of Québec (ATQ). I can ask for help from my local mental health rights protection and advocacy group. If I have a lawyer, he or she must help me prepare.
- In court or at the ATQ, I will be asked about my mental state and about the danger I pose.

A FEW TIPS...

- When speaking, I should look at the judge or the members of the ATQ and be courteous.
- Read the two psychiatric reports before going to court and try not to act in a way that simply confirms what they say.
- Maintain self-control at all times and do not chew gum, do not wear a cap and do not use foul language.
- Remain calm and cool as I speak.
- Don't react right away if I disagree with what is being said. Wait until it is my turn to speak.
- Be as brief as possible in answering my lawyer's, the judge's or the hospital lawyer's questions.
- If I don't understand a question or I don't remember an event, just say so.

My recourses

If I am unhappy with a decision that has led to my confinement, I have the following recourses:

- **Appeal to the Court of Appeal of Québec**

If the court has made a legal error, I can appeal the decision to the Court of Appeal of Québec within five days.

- **Appeal to the Administrative Tribunal of Québec (ATQ)**

I can use this recourse if I feel there is no reason for me to be confined in the hospital.

I can also use it for any decision made under the terms of the Act. For example, I can contact the ATQ if I am being prevented from communicating with the person of my choice.

What are the institution's obligations?

HOW DOES THE ATQ WORK ?

- Three individuals come to the hospital to decide if I still represent a danger to myself or others: a lawyer, a social worker or psychologist, and a psychiatrist.
- First, they hear my psychiatrist's point of view.
- Then I explain why I feel I am not dangerous.
- Once again, I can be represented by a lawyer.
- It is important for me to prepare a defence.
- I can appeal to the ATQ more than once. For instance, if the decision is to keep me in the hospital and two weeks later, I still want to leave, I can make another request.



- The institution is obliged to:
 - Tell me where I am being confined.
 - Tell me why I am being confined.
 - Inform me of my right to contact my family and a lawyer. It must also remind the hospital staff that I have a right to a lawyer to represent me in court. I have the right to contact my lawyer even if that means making a long-distance call.
- The institution must give me a document in accordance with the Schedule at the end of the Act that talks about my rights and recourses.
- I must be allowed to communicate with anyone I choose in complete confidentiality.
- The doctor can temporarily restrict my right to contact people. However, he or she must give me a copy of that decision and explain the reasons behind it. The doctor may not prevent me from communicating with:
 - my legal representative
 - the person qualified to give consent for my care
 - my lawyer
 - the Public Curator and the ATQ.

My rights

- Right to be transferred to another institution (under certain conditions).
- Right to refuse any treatment or examination other than the psychiatric examination authorized by the court.
- Right to demand to be released from confinement if the law has not been followed.
- Right to be treated with respect and with dignity.
- Right to professional secrecy and confidentiality.
- Right to have a decision reviewed.
- Right to be accompanied by the person of my choice in the various steps I take.
- Right to be represented by a lawyer in court.



THE INSTITUTION IS IGNORING MY RIGHTS. WHAT CAN I DO?

- **I can speak to the local service quality and complaints commissioner for the hospital and eventually file a complaint with the institution.**
- **I can contact the institution's users committee.**
- **I can also talk to my lawyer, to my local mental health rights protection and advocacy group and to the self-help group I attend.**
- **If my situation is urgent, I can contact the Québec Ombudsman, who can take immediate action.**

PRACTICAL ADVICE

Call a lawyer so he or she can advise me and help me get out of the hospital.

Tell a friend what I would want done if I am ever hospitalized against my will.

Ask friends and/or family to visit me while I am hospitalized; it is always useful to have witnesses.

Keep the following telephone numbers with me at all times: my local mental health rights protection and advocacy group, my self-help group, legal aid and my lawyer.

If I am taken to the hospital against my will, contact the institution's Director of Professional Services (DPS) right away.

If I have to appear in court or before the ATQ, insist on having my own clothes, and be neat and clean.

Prepare for any appearance in court or before the ATQ.

Stay calm and courteous at all times, even if I'm provoked.

Make a note of important events (see the *Checklist* on page 19).

What is the role of my local mental health rights protection and advocacy group?

- Provide information for people who are experiencing, or have experienced, a mental health problem and guide them in exercising their rights and recourses.
- Help these people take control of their lives.
- Defend and promote individual and collective rights.
- Act on behalf of people who are not able to ask for help if their rights are being ignored.
- Provide a counterbalance in relations with the authorities, act as a spokesperson for people with mental health problems and bring the issues before the authorities concerned.
- Encourage people who are experiencing, or have experienced, a mental health problem to speak up, and publicly advocate respect for their rights.



CHECKLIST

I arrived at the hospital:

Date..... Time.....

I told a member of the staff, or the DPS, that I wanted to leave or not be kept at the hospital:

Date..... Time.....

I called a lawyer or the legal aid office:

Date..... Time.....

I called my local mental health rights protection and advocacy group, my self-help group or the hospital users committee:

Date..... Time.....

Continued on page 20

CHECKLIST

I had my first psychiatric examination:

Date..... Time.....

Psychiatrist's name.....

I had my second psychiatric examination:

Date..... Time.....

Psychiatrist's name.....

I was served:

Date..... Time.....

I was not served.

I appeared in court:

Date..... Time.....

I did not appear in court:

My rights that have not been respected:

Appeal to the Administrative Tribunal of Québec

By telephone:

Monday to Friday, between 8:30 a.m. and 4:30 p.m.

Montréal area: 514 873-7154

Québec City area: 418 643-3418

Elsewhere in Québec: 1 800 567-0278 (toll-free)

By e-mail:

tribunal.administratif@taq.gouv.qc.ca

Reason for appeal:

To contest my confinement

To change institutions

Communication restrictions

Name of institution:

.....
.....

Last name and first name:

.....
.....

Signature

Date

Information to be sent to the Administrative Tribunal if you would like to contest a decision made regarding your confinement.

List of regional community centres (legal aid)

Abitibi-Témiscamingue

320 Saint-Germain Street East, Suite 601
Amos J9T 1V3
819 732-5215

North Shore

690 Laure Boulevard, Suite 204
Sept-Îles G4R 4N8
418 964-8110

Laurentians–Lanaudière

85 De Martigny Street West, Suite C-3.10
Saint-Jérôme J7Y 3R8
450 431-1122

Montréal

425 de Maisonneuve Boulevard West, Suite 600
Montréal H3A 3K5
514 864-2111

Québec City

5350 Henri-Bourassa Boulevard, Suite 240
Charlesbourg G1H 6Y8
418 627-4019

Saguenay–Lac-Saint-Jean

267 Racine Street East, 1st floor, P.O. Box 1510
Chicoutimi G7H 5L4
418 543-7783

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List of
regional community centres
(legal aid) (continued)

Lower St. Lawrence–Gaspé Peninsula

566 1^{re} Avenue West
Rimouski G5L 1C2
418 722-4422

Eastern Townships

225 King Street West, Suite 234
Sherbrooke J1H 1P8
819 563-6122

Mauricie–Bois-Francis

1350 Royale Street, Suite 601
Trois-Rivières G9A 4J4
819 379-4175

Outaouais

768 Saint-Joseph Boulevard, Suite 210
Gatineau J8Y 4B8
819 772-3235

South Shore

101 Roland-Therrien Boulevard, Suite 301
Longueuil J4H 4B9
450 928-7655

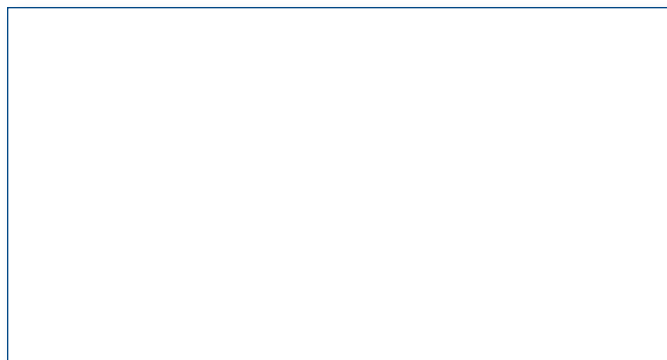
Commission des services juridiques

2 Complexe Desjardins, Tour de l'Est, Suite 1417
P.O. Box 123, Succursale Desjardins
Montréal H5B 1B2
514 873-3562

Québec Ombudsman

Montréal: 514 873-3205
Toll-free: 1 800 463-5070





My local mental health rights protection and advocacy group

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