British Columbia's
Office of the Human Rights Commissioner

"We're still here"

Report of the Inquiry into detentions under the *Adult Guardianship Act*

Report | April 2025

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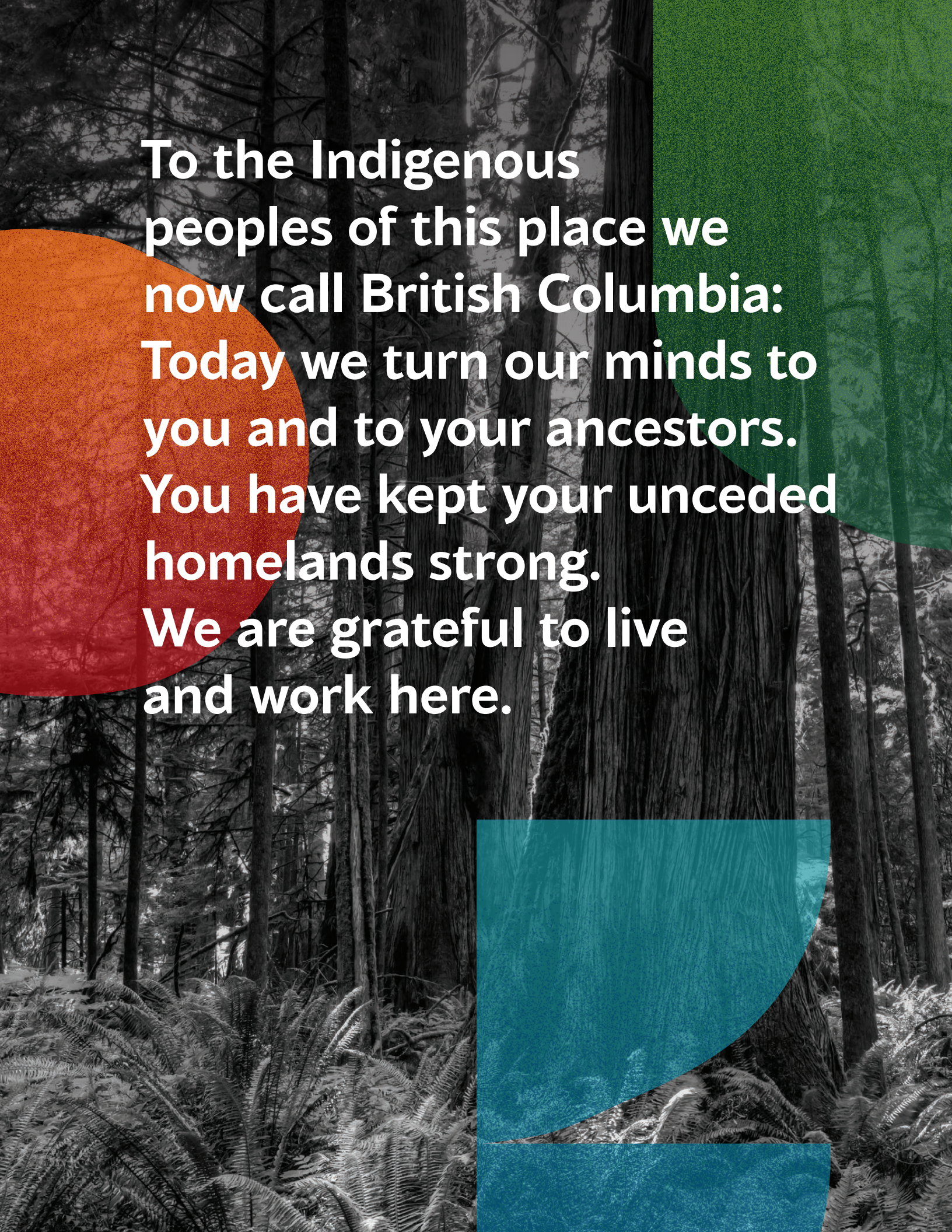
To the Indigenous
peoples of this place we
now call British Columbia:
Today we turn our minds to
you and to your ancestors.
You have kept your unceded
homelands strong.
We are grateful to live
and work here.

British Columbia's
Office of the Human Rights Commissioner

April 2025

The Honorable Raj Chouhan
Speaker of the Legislative Assembly
Parliament Buildings
Victoria, BC V8V 1X4

Dear Mr. Speaker,

It is my pleasure to present the Human Rights Commissioner's report "'We're still here": Report of the inquiry into detentions under the *Adult Guardianship Act*" to the Legislative Assembly. It has been prepared in accordance with sections 47.15 and 47.20 of the *Human Rights Code.*

Sincerely,

Kasari Govender
Human Rights Commissioner

cc: Kate Ryan-Lloyd
Clerk of the Legislative Assembly

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If you are unsure about terminology used in this report, we invite you to visit our Human Rights Glossary at: bchumanrights.ca/glossary

Acknowledgements

The Human Rights Commissioner is grateful to the following people and organizations for their contributions to the Inquiry and who made this report possible:

- Family members of people who were detained under the *Adult Guardianship Act* who shared their experiences with us
- Community organizations that participated in the Commissioner's two community engagement sessions
- Government, Public Guardian and Trustee and designated agency staff who responded to the Commissioner's information requests and orders
- Designated agency representatives who participated in interviews with Commissioner staff
- Inquiry participants who provided feedback during the Inquiry administrative fairness review and recommendations briefings
- External subject matters experts and researchers

Many BCOHRC staff were involved through the course of the Inquiry. The Commissioner thanks them for all their contributions to this work. The Commissioner is especially grateful to Natt Hongdilokkul, Research Officer, Quantitative Specialist; Maria Sokolova, Staff Lawyer; and Carly Hyman, Senior Staff Lawyer, Inquiries and Investigations for their dedication during this Inquiry.

The Commissioner acknowledges the individuals and community organizations who have been drawing attention to the human rights implications of detentions under the *Adult Guardianship Act* for years. The Commissioner is grateful to those who have worked, and continue to work, to promote and protect human rights in the province.

Finally, the Commissioner especially acknowledges the many adults and their families who have experienced and been deeply impacted by detentions under the *Adult Guardianship Act*. The Commissioner is grateful to those who shared their experiences with us. This report is dedicated to all the adults and their families who have been impacted by this system.

Executive summary

This Inquiry is intended to shine a light on: (1) whether and to what extent vulnerable[1] adults are being detained under the emergency protection provisions of the *Adult Guardianship Act* (AGA) and (2) whether such detentions are lawfully permitted and in accordance with the Province's human rights obligations. Adults who are detained under the AGA are often in highly vulnerable positions; while protecting them against abuse and neglect is an important goal, respecting their human rights is an important component of treating vulnerable adults with dignity and protecting their well-being.

The AGA is part of a suite of laws that are designed to ensure that adults' wishes are heard and respected if they become incapable of making their own decisions. Within the AGA framework, designated agencies (Community Living BC and the regional health authorities) are required to investigate reports that adults are experiencing abuse, neglect or self-neglect and where they have an illness, disease, injury or other condition that affects their ability to make decisions. In some cases, designated agencies encounter serious circumstances where they believe that the adult is at imminent risk of harm and the adult has not accepted an offer of support and assistance. This includes situations where an adult is experiencing abuse, neglect or self-neglect in the community, is at a high degree of risk and does not understand the danger they are in because of cognitive impairment. In these circumstances, the AGA provides the designated agencies with the powers in s. 59(2) to take steps to protect the adult, which have been used to detain adults against their will, for treatment and planning and in some cases for significant periods of time.

This Inquiry — and the Commissioner's findings and recommendations — are not intended to undermine the important goals of protecting vulnerable adults. Rather, the Inquiry is about ensuring that, when the state exercises extraordinary powers that interfere with an adult's liberty, the exercise of power accords with human rights laws and standards. The goal is to both protect people from harm and not cause further harm in the process, by respecting their human rights as required by international human rights law.

In the course of this Inquiry, the Commissioner gathered extensive data and records from the Ministry of Attorney General, the Ministry of Health, the Public Guardian and Trustee and the designated agencies. The Commissioner held two community engagement sessions; conducted interviews with family members of adults who were detained under the AGA and interviewed staff in each designated agency. The Commissioner used Canada's international human rights law commitments as the framework for the analysis.

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[1] The Commissioner is aware that the use of the term "vulnerable" may be perceived to invoke stereotypes and assumptions about the capabilities of adults whom the law treats as lacking capacity. However, in this report, reference to "vulnerability" is not used as a moral judgment or intended to downplay the role of the state, laws, systems and practices in creating vulnerabilities. Rather, it is a recognition that the state always has a responsibility to ensure it does not abuse its power or allow others to abuse their power in relation to people who may be more vulnerable due to their physical, developmental or mental condition.

The Commissioner found:

1. **Detentions under s. 59(2) of the AGA impact a significant number of adults.** Between 2018 and September 2023, designated agencies detained 300 people a total of 340 times. The median length of detentions was six days, while the maximum was 212 days.

2. **Transparency and oversight over detention are lacking.** The Commissioner found a lack of transparency both at a systemic and individual level. Specifically, the Commissioner found a lack of publicly available information on how this law is administered; a tendency to restrict information to representatives, legal counsel and family/friends; with limited ability to seek independent review or oversight.

3. **Adults' rights to fair process have not been adequately respected.** Detention is a significant interference with liberty that must be accompanied by adequate safeguards to prevent arbitrariness.[2] Such safeguards include rights notification; clear criteria, reasons or timelines for detention;[3] prompt and full disclosure of the information on which the decision to detain is based;[4] access to counsel;[5] and independent oversight and periodic review procedures.[6] These safeguards are largely lacking for s. 59 AGA detentions both in law and in practice.

4. **Designated agencies who are detaining adults are doing so without legal authority.** The Commissioner found that significant concerns around illegality are raised in some, but not all detentions, including inconsistent and improper reliance on s. 59(2); evidence of detentions beyond the time necessary to address the emergency; failure by designated agencies to seek support and assistance court orders; uncertain police authority; and detentions occurring under "doctor's orders".

5. **Disproportionate impact of detention practice on seniors, people who are unhoused and people with disabilities, including people with mental health and substance use issues, results in systemic discrimination.** The Commissioner concludes that the current approach to detention under s. 59(2) of the AGA is discriminatory because the harms of detention—including the fact that many adults are being detained beyond the scope of the legal authority granted by the AGA and without due regard to their procedural rights—are disproportionately experienced by seniors, people who are unhoused and people with disabilities. The Commissioner is not concluding that any and every detention of vulnerable adults who are apparently abused or neglected is necessarily discriminatory, but that the current system and practices for detention do result in inequality.

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[2] UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, para. 19.
[3] UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, para. 24.
[4] UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, para. 25.
[5] UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, paras. 23, 46, 58, 59.
[6] UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, paras. 4, 19, 44.

The Commissioner makes 10 recommendations to the Ministry of Attorney General, the Ministry of Health and the designated agencies for change, including that they:

- immediately stop detaining adults for longer than the duration of an emergency and ensure all detained adults receive written reasons for being detained;
- provide legal advice and representation to all adults who are detained;
- introduce amendments to the AGA to clarify whether detention is allowed in emergency situations;
- develop provincial regulations, policies or guidelines to support implementation of legislative changes to ensure rights are respect;
- make data reporting mandatory, develop provincial data standards, and require annual public reporting;
- develop mandatory provincial training;
- consult on the role of police under Part 3 of the AGA;
- assess and report publicly on the community health resources that are required to reduce the number and length of detentions of adults under the AGA;
- create an independent mechanism for detained adults to challenge their detentions and their conditions; and
- create an independent officer of the legislature with oversight of detentions in health care facilities

Inquiry at a glance

Commissioner's opening

Adults who are being abused or neglected and who are unable to seek support and assistance deserve the protection of the state. They deserve to be listened to and for their decisions about their bodies and how they live their lives to be respected as much as possible. They deserve to have public agencies and health care professionals be proactive in ensuring that they are safe. They deserve respect for their human rights: the rights to liberty, to be free from arbitrary state interference, to safety within their homes and families, to substantive equality.

The *Adult Guardianship Act* (AGA)[7] is part of a suite of laws that are designed to work together to ensure that capable adults can make their own decisions and to provide tools for adults to appoint substitute decision makers or provide instructions for a time when they are not able to make their own decisions. These laws are designed to ensure that adults' wishes are heard and respected if they become incapable of making their own decisions.

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[7] *Adult Guardianship Act*, RSBC 1996, c 6, https://canlii.ca/t/544c1

The AGA is, at its core, legislation designed to support an adult's autonomy and decision-making.[8] This is reflected in its guiding principles including that adults are presumed to be capable of making their own decisions until the contrary is demonstrated; that adults are entitled to live in the manner that they wish and to accept or refuse help; and that adults should receive the most effective and least intrusive form of help when they are unable to care for themselves.

Within the AGA framework, designated agencies (Community Living BC (CLBC) and the regional health authorities) are required to investigate reports that adults are experiencing abuse, neglect or self-neglect and where they have an illness, disease, injury or other condition that affects their ability to make decisions. In many cases, staff successfully find informal solutions to provide the adult with the support they need.

However, designated agencies also encounter serious circumstances where adults do not accept the offered support and the designated agency believes that the adult is at imminent risk of harm. In other words, emergency situations where the designated agency believes that it must act without delay to protect the adult from harm including death. This includes situations where an adult is being abused in the community, is at a high degree of risk and does not understand the danger they are in because of a cognitive impairment. There is no question that adults in these situations may be facing risks to their lives or risks of serious injury as a result of abuse, neglect and self-neglect. In these circumstances, the AGA provides the designated agencies with the extraordinary powers in s. 59(2) to take steps to protect the adult.

On its face, s. 59(2) is intended to be protective of human rights and was developed with the laudable goal of protecting adults in these circumstances from harm. I appreciate the difficult work of staff whose job includes protecting adults in these fraught circumstances and acknowledge the emotional toll this may take on health care providers, particularly in light of the limits on appropriate support services immediately available in the community to meet their needs. I also recognize that these lifesaving interventions may be welcomed by concerned family and friends, who may be at a loss for how to help their loved one. This Inquiry — and my findings and recommendations — are not intended to undermine the important goals of protecting these vulnerable adults.

Rather, this Inquiry is about ensuring that, when the state exercises extraordinary powers that interfere with an adult's liberty, the exercise of power accords with human rights laws and standards. My view is that the goals of the emergency protections under the AGA and the goals of this Inquiry are not mutually exclusive — that we can, and must, take steps to protect incapable adults from imminent harm and also respect their human rights when doing so. In other words, we can both protect people from harm and not cause further harm in the process by respecting and protecting the necessary procedural safeguards required by international human rights law.

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[8] British Columbia, Official Report of Debates of the Legislative Assembly (Hansard), 35th Parl, 2nd Sess, Vol 11, No 24 (7 July 1993) at 8364 (Hon. C. Gabelmann).

Throughout this Inquiry, we have sought to place the perspectives and the rights of vulnerable adults at the heart of our work on this issue. While we were only able to access the perspectives of impacted adults through their family members and service providers, it is the human dignity and human rights of detained adults—primarily adults with disabilities, seniors and people who are unhoused—that is the scaffolding on which this Inquiry is built. While this became a highly technical legal investigation into the operation of s. 59(2) across the province, we never lost sight of why we were doing this and whose lives, safety and rights were at stake. This report is dedicated to them.

Purpose of the Inquiry

The *Adult Guardianship Act* (AGA) is legislation that exists to protect vulnerable adults. It permits designated agencies to provide emergency assistance to adults who appear to be abused or neglected, and seem incapable of giving or refusing consent, and where immediate action is required to preserve the adult's life or protect them from serious harm.

B.C.'s Human Rights Commissioner decided to undertake the Inquiry into Detentions under the *Adult Guardianship Act* when she became aware that a mechanism designed to provide assistance to abused or neglected adults is potentially resulting in serious violations of their human rights. In particular, BC's Office of the Human Rights Commissioner (BCOHRC) heard that the emergency assistance provision (s. 59) of the AGA, is used by designated agencies[9] to detain those adults without publicly available information about how long people are being detained or what procedural protections they can access. While this is discussed in more detail below, it is worth clarifying that the word detention is used in this report as it is used in Canadian and international law; that is, detention is when a person is held against their will by the power of the state. We spoke to family members who shared their experiences of having their loved ones detained under the AGA—their mothers, sons, partners. Each shared their story in hopes of seeing change and ensuring that the human rights of their loved ones and others in similar situations would be respected and protected.

The Commissioner asked interviewees why they decided to participate in the Inquiry. They said:

> ***"Because I felt so helpless in being able to find the proper help and direction with the problem that I've been having with him being detained in there for so long and the power that they seem to have really scares me and upsets me and makes me ill. And to see what they're doing to him in the time they've had him.."***
>
> *—Spouse*

[9] There are seven designated agencies under the AGA: Fraser Health Authority, Interior Health Authority, Island Health Authority, Northern Health Authority, Vancouver Coastal Health Authority, Community Living BC and Providence Health Care Society.

"I was absolutely shocked that any health system could do this to people when we have done nothing wrong.... And then to be treated like a criminal. Absolutely treated like a criminal ... and suddenly we are torn apart after 62 years together. And that's very, very harmful to both of us.... And the doctor said she can go home after five days ... but she never got out."

— Spouse

"I'm happy to see that the Commissioner is looking into this issue. I felt it was important to give our testimony, our experiences, because I believe that they abused their powers and privileges as a designated [agency] under the Adult Guardianship Act. And it needs to be highlighted so that they can be corrected and prevented. And I would not like to see what happened to us happen to any other family."

— Mother

"I felt my mom's human rights were being violated. She wasn't being heard. The Health Authority was overriding my power of attorney and not collaborating and including me as a decision maker and my hand was forced. I was coerced to say yes to something because the social worker team at the hospital told me if I didn't, I'd be referred to the Public Guardian and Trustee...."

— Son

The adults who we suspected are most affected by the emergency provisions of the AGA — including persons with disabilities and older people — have faced historical and ongoing deprivations of their liberty based on stereotypes and assumptions about their capacity and ability to exercise autonomous decision making. The guiding principles of the AGA speak to balancing the important goals of protecting adults' autonomy and ensuring their protection against harm. It was therefore deeply concerning to hear from people living in British Columbia, prior to launching this Inquiry, that the AGA was instead being used to violate adults' autonomy. What we heard also led us to suspect this was being done in a way that perpetuates disproportionate disadvantages and undermines human dignity without procedural safeguards in place to allow for appropriate and meaningful human rights protection. It was important to investigate the veracity of what the Commissioner had heard to ensure the rights of those detained are being respected, and to make recommendations where change is needed to respect human rights law.

As noted by the Supreme Court of British Columbia in the context of a detention of an adult under the emergency provisions of the AGA:

> As expressed by then Chief Justice McLachlin in *United States of America v. Ferras*, 2006 SCC 33 at para. 19, it is "an ancient and venerable principle … as old as the *Magna Carta*" that no person shall lose her liberty "without due process according to the law". This is among the most fundamental aspects of the rule of law, and one that must be protected and fostered, perhaps most keenly in the context of the non-punitive detention of vulnerable people who, because of some incapacitating condition, find themselves subject to well-meaning but non-consensual state interventions that deprive them of their autonomy.[10]

The possibility of grave human rights violations in the context of an opaque system led the Commissioner to exercise her powers to shine a light on: (1) whether and to what extent vulnerable[11] adults are being detained under s. 59(2) of the AGA and (2) whether such detentions are lawfully permitted and in accordance with the Province's human rights obligations.

Commissioner's jurisdiction

The Commissioner is responsible for promoting and protecting human rights in the province of British Columbia. The Commissioner's powers and mandate are outlined in s. 47.12(1) of the *Human Rights Code* (the Code) and include:

- identifying, and promoting the elimination of, discriminatory practices, policies and programs (s. 47.12(1)(a))
- publishing reports, making recommendations or using other means the Commissioner considers appropriate to prevent or eliminate discriminatory practices, policies and programs (s. 47.12(1)(c))
- examining the human rights implications of any policy, program or legislation, and making recommendations respecting any policy, program or legislation that the Commissioner considers may be inconsistent with the Code (s. 47.12(1)(f))
- promoting compliance with international human rights obligations (s. 47.12(1)(i))

The Commissioner also has the power to inquire into any matter where such an inquiry would promote or protect human rights (s. 47.15).

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[10] *A.H. v. Fraser Health Authority,* 2019 BCSC 227, (CanLII), para. 1, https://canlii.ca/t/hxpcx.

[11] The Commissioner is aware that the use of the term "vulnerable" may be perceived to invoke stereotypes and assumptions about the capabilities of adults whom the law treats as lacking capacity. However, in this report, reference to "vulnerability" is not used as a moral judgment or intended to downplay the role of the state, laws, systems and practices in creating vulnerabilities. Rather, it is a recognition that the state always has a responsibility to ensure it does not abuse its power or allow others to abuse their power in relation to people who may be more vulnerable due to their physical, developmental or mental condition.

Thus, the Commissioner has a mandate to promote compliance with both the *Human Rights Code* and international human rights standards. Canada is a party to several international human rights treaties that protect liberty interests and equality rights, and the Code contains protections against discrimination in the provision of services. The Commissioner relies on both the Code and international human rights laws and standards as the framework for analysis in this report. Those laws and standards are described in more detail in the following section of the report on legal context.

Terms of reference

The Commissioner inquired into the following questions:

1. What have been the detention practices of designated agencies under the AGA over the last five years?
    a. How often have designated agencies detained adults to provide support and assistance under s. 59(2) of the AGA, how many people were detained and for how long?
    b. How often have designated agencies applied for court orders when detaining adults under s. 59 and how often have they complied with s. 24 of the *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c. 181 (HCCCFAA)[12] since it came into force in November 2019?
    c. What are the reasons people have been detained under s. 59(2) of the AGA?
    d. What is the disaggregated demographic breakdown for the people who have been detained?
    e. Do the demographic analysis or reasons for detention reveal disproportionate impacts on marginalized communities (for example, on the basis of gender or Indigeneity)?
2. Do designated agencies interpret s. 59(2) of the AGA to permit them to detain adults in order to protect them from harm?
    a. If so, how long do the designated agencies believe people can be detained under s. 59(2) of the AGA without a court order?
3. Outside of the application for a court order and s. 24 of the *Health Care (Consent) and Care Facility (Admission) Act* are there any other procedural protections in place for people who are detained?
4. If the data obtained through question 1(d) shows a disproportionate impact of detention on marginalized communities, does this amount to systemic discrimination?

[12] Section 24 of the *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c. 181, https://canlii.ca/t/5650p, enables managers of care facilities to admit adults for 72 hours without consent if the adult is receiving emergency assistance under s. 59 of the AGA or if its necessary to preserve the adult's life, prevent serious harm to the adult or to any person.

Methodology

To answer the Inquiry questions, the Commissioner requested or ordered the seven designated agencies, the Ministry of Health, the Ministry of Attorney General and the Public Guardian and Trustee to produce records including policies, procedures and training material regarding Part 3 of the AGA — which contains s. 59 and other related sections — and s. 24 of the HCCCFAA. The Commissioner also ordered or requested records related to *A.H. v. Fraser Health Authority* — a court case that considered an involuntary detention under the AGA in the context of constitutional rights — and the government's review of Part 3 of the AGA by a working group of the Ministry of Attorney General, Ministry of Health and Public Guardian and Trustee.

The Commissioner ordered the designated agencies to provide data for every instance where an adult was detained under section 59(2) of the AGA between January 1, 2018 and September 30, 2023 including:

- Whether the adult was experiencing abuse,[13] neglect and/or self-neglect (defined on page 30)
- The reasons for the detention
- The adults' age, place of residence, gender or gender identity, race/ethnicity, whether they have a disability including physical or developmental, whether they have mental health and/or substance use issues and whether they are a victim-survivor of gender-based violence
- The location of the detention
- Whether there is a record of notifying the adults of their rights and facilitating access to counsel
- The length of the detention
- The mechanism or reason the detention ended
- The number and length of detentions under s. 59(2) of the AGA between 2018 and 2023
- How AGA detentions ended or what happened to adults after they were detained under the AGA

The Commissioner asked the designated agencies to detail all relevant limitations with the data they provided. These are described in Finding 2.

[13] Some designated agencies have created additional interpretations to the AGA's statutory definition of abuse. For example, IHA in their *Policy AL0800 – Adult Guardianship Act (Part 3) Designated Agency Policy*, 14 December 2022, 2, defines Spiritual Abuse as: Preventing a person from following their spiritual or religious traditions or forcing a different spiritual or religious practice on a person. Could also include demeaning or belittling a person's spiritual or religious traditions, beliefs or practices. A person may feel shame for wanting to practice their traditional or family beliefs.

The Commissioner sought input from community and people with lived experience through community roundtables and interviews with family members. The first roundtable in February 2024 was attended by 13 individuals representing 11 community and advocacy organizations who work in the adult guardianship field. After receiving and analyzing the data from the designated agencies, the Commissioner decided to hold a further roundtable to consult on how that data should be used and on the development of recommendations. The second roundtable took place in late October 2024 and was attended by seven individuals representing seven organizations. This roundtable was followed by one written submission from an eighth organization. In addition, BCOHRC staff interviewed family members of four adults who were detained under the AGA.

The Commissioner also issued orders to each designated agency for a representative to attend interviews and answer questions. The interviews, which took place in the fall of 2024, were conducted under affirmation and were recorded and transcribed.

Cabinet records

Section 47.16 of the *Human Rights Code* provides the Commissioner with broad powers to order the production of information relevant to an inquiry. However, the Commissioner cannot order the government to produce Cabinet records if the Attorney General makes a certification to protect Cabinet information under s. 47.18 of the Code.

For this Inquiry, the Commissioner requested the production of relevant Cabinet records. In response, the government asserted public interest immunity over some of the records requested. The Commissioner entered into a protocol with government to access all the records that are subject to the governments' assertion of public interest immunity. Government provided the Commissioner with the records but did not waive privilege or public interest immunity over them. The Commissioner reviewed the records and believes she can fulfill her mandate and report on the issues under investigation in this Inquiry despite the government's assertion of privilege over some details.

Legal context

Human rights protections

International human rights law

In Canadian law, the generally accepted definition of "detention" is any significant physical or psychological restraint on liberty, no matter the duration.[14] In international law, the definition of "detention" refers to detained persons, which means "any person deprived of personal liberty except as a result of conviction for an offence."[15]

Detention that is unlawful or otherwise arbitrary has long been recognized as a human rights violation. Documents dating back centuries like the *Magna Carta* (1215 BCE) have affirmed that no one should be deprived of their liberty without the due process of law.

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[14] *R. v. Grant*, 2009 SCC 32 (CanLII), [2009] 2 S.C.R. 353, paras 42, 44, https://canlii.ca/t/24kwz.

[15] United Nations (General Assembly), *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by General Assembly resolution 43/173, 9 December 1988, "Use of Terms", (b), https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention.

Today, Canada, on behalf of its federal, provincial and territorial governments, is a signatory to a number of modern international human rights instruments that prohibit arbitrary detention. These include Article 9 of the *Universal Declaration of Human Rights*,[16] Article 9 of the *International Covenant on Civil and Political Rights* (ICCPR) and article XXV of the *American Declaration of the Rights and Duties of Man*.[17] Indeed, on the international stage, protection against arbitrary detention has become customary law and is non-derogable, meaning it is a fundamental right that cannot be limited in any circumstance, except in times of a proclaimed public emergency.[18]

Protection against arbitrary detention by the state is also enshrined in the Canadian constitution, namely the *Charter of Rights and Freedoms*, which reflects these international standards.

Liberty protections generally

Canada ratified the ICCPR in 1976, committing to respect, protect and ensure the rights in the ICCPR in good faith.[19] Canada's compliance with the ICCPR is periodically reviewed by the UN Human Rights Committee, a treaty body comprising experts elected by signatory states. Canada is also a signatory to the Optional Protocol to the ICCPR, which permits individuals to bring complaints about their particular cases to the Committee if they have exhausted domestic remedies. In state party reviews and in individual communications, the Committee interprets and applies the ICCPR.

General Comment No 35: Article 9 (Liberty and Security of the Person) is the UN Human Rights Committee's jurisprudential statement of its interpretation of Article 9 of the ICCPR.[20] It explains the protections against arbitrary detention included in Article 9, reflecting the Committee's prior jurisprudence. The General Comment is applied to every state party review and individual communication that the UN Human Rights Committee conducts. The Committee's General Comment 35 on Liberty and Security of the Person describes liberty of the person as concerning "freedom from confinement of the body, not a general freedom of action."[21]

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[16] United Nations (General Assembly), *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810, (1948), https://www.un.org/en/about-us/universal-declaration-of-human-rights.

[17] Canada is a member of the Organization of American States (OAS), which means it must respect the American Declaration, monitored by the Inter-American Commission on Human Rights. Canada has not ratified the American Convention on Human Rights, which would subject it to the jurisdiction of the Inter-American Court of Human Rights. The term "man" in the Declaration refers to individuals of all sexes and genders.

[18] United Nations (General Assembly), *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976), Article 4, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights .

[19] While the Declaration is non-binding, the ICCPR is a binding treaty that Canada ratified in 1976. The duties of signatory states are to respect, to protect and to fulfill ICCPR rights; Canada is also a signatory to the *Vienna Convention on the Law of Treaties,* article 26 of which obligates it to perform treaty obligations in good faith.; See also UN Human Rights Committee*, General Comment 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add. 13, 26 May 2004, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.13&Lang=en.

[20] UN Human Rights Committee (HRC), *General Comment 35 on Article 9, (Liberty and Security of the Person)*, CCPR/C/GC/35, 16 December 2014, https://documents.un.org/doc/undoc/gen/g14/244/51/pdf/g1424451.pdf.

[21] UN Human Rights Committee (HRC), *General Comment 35 on Article 9,* para. 3.

General Comment No. 35 clarifies that most of Article 9 applies to all people deprived of liberty. While part of paragraph 2 and all of paragraph 3 apply only to criminal charges, the rest of Article 9's five paragraphs, and in particular the right to review by a court described in paragraph 4, apply more broadly.[22]

The General Comment describes that while deprivation of liberty is sometimes justified, any deprivation must be carried out with respect for the rule of law and must not be arbitrary. These are two distinct criteria: a detention can be authorized by domestic law while still being arbitrary.

The General Comment clarifies that any substantive grounds for arrest or detention must be "prescribed by law" and should be defined "with sufficient precision to avoid overly broad or arbitrary interpretation or application. Deprivation of liberty without such legal authorization is unlawful."[23] However, rather than simply defining arbitrariness as "against the law," the General Comment states that arbitrariness must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law as well as reasonableness, necessity and proportionality.[24] The Committee provides the following examples of arbitrary detentions:

- detentions that lack any legal basis
- detentions beyond the length of a sentence (also unlawful)
- unauthorized extensions of detention (also unlawful)
- a decision to keep a person in any form of detention that is not subject to periodic re-evaluation of the justification for continuing detention
- detention on discriminatory grounds[25]

General Comment 35 concludes that deprivations of liberty must be established by law, must be accompanied by procedures that prevent arbitrary detention and state parties should ensure compliance with their legally prescribed procedures.

Procedures that prevent arbitrary detention include the right to notification and reasons and the right to court proceedings to determine the lawfulness of the detentions. These procedures are outlined in General Comment 35's description of the safeguards that ICCPR Article 9(2) guarantees to all persons who have been arrested, including any person apprehended who is then detained.[26] The General Comment explains that everyone who is arrested should be informed of the reasons for the arrest to enable them to seek release if they believe that the reasons given are invalid or unfounded.[27] The ICCPR requires that notification be provided immediately except in exceptional circumstances,[28] that reasons include the factual and legal basis for the detention[29] and that

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[22] UN Human Rights Committee (HRC), *General Comment 35 on Article 9,* para. 4.
[23] UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, para. 22.
[24] UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, para. 12.
[25] UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, paras. 10-23.
[26] The term "arrest" refers to any apprehension of a person that commences a deprivation of liberty, it is not limited to formal arrest in a criminal matter.
[27] UN Human Rights Committee (HRC), *General Comment 35 on Article 9,* para. 25.
[28] UN Human Rights Committee (HRC), *General Comment 35 on Article 9,* para. 27.
[29] UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, para. 25.

reasons be provided in a language the adult understands.[30] The General Comments indicates that oral notification is generally sufficient but for people with mental disabilities, notice and reasons should also be provided directly to appropriate family members and designates.[31]

The United Nations Working Group on Arbitrary Detention explains that the factual and legal basis for detention must be disclosed to the detainee and/or their representative without delay to provide adequate time to prepare for a court challenge. Disclosure should include a copy of the detention order, access to and a copy of the case file and any material relating to the reasons for the deprivation of liberty.[32] The Working Group also notes that state parties should develop means to verify and document that a person has actually been informed of their rights.[33]

Further, the Working Group offers the following guidance on providing rights notification:

> ***"Such information should be provided in a manner that is gender- and culture-sensitive and corresponds to the needs of specific groups, including illiterate persons, minorities, persons with disabilities, older persons, indigenous peoples, non-nationals, including migrants regardless of their migration status, refugees, asylum seekers, stateless persons and children. The information shall be provided in a language and a means, mode or format that is accessible and that the said persons understand, taking into account augmentative and alternative means of communications for persons with a mental or physical impairment."[34]***

With respect to rights to counsel, Article 9(4) of the ICCPR requires that all detainees, including those detained in hospital, be afforded prompt and regular access to counsel.[35] The UN Human Rights Committee notes that denial of access to counsel may result in procedural violations of paragraph 4 of Article 9 of the ICCPR.[36]

General Comment 35 also refers to the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), which also set standards for protection for detainees. The UN Body of Principles indicates that for people detained by the state, notification of right to counsel must be prompt; counsel must be free for those without means to

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[30] UN Human Rights Committee (HRC), *General Comment 35 on Article 9,* para. 26.
[31] UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, para. 28.
[32] United Nations General Assembly, *Report of the Working Groups on Arbitrary Detention, United Nations Basic Principles and Guidelines on Remedies and Procedures of the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, paras 67-68.
[33] United Nations General Assembly, *Report of the Working Groups on Arbitrary Detention, United Nations Basic Principles and Guidelines on Remedies and Procedures,* para 58.
[34] United Nations General Assembly, *Report of the Working Groups on Arbitrary Detention, United Nations Basic Principles and Guidelines on Remedies and Procedures of the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, A/HRC/30/37, July 6, 2015, para. 57, https://www.ohchr.org/en/documents/thematic-reports/ahrc3037-united-nations-basic-principles-and-guidelines-remedies-and.
[35] UN Human Rights Committee (HRC), *General comment no. 35 on Article 9,* paras. 46, 58, 59; See also *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, approved by the General Assembly in its resolution 43/173, 9 December 1988, Principles 11, 17, 18, https://digitallibrary.un.org/record/161762.
[36] UN Human Rights Committee (HRC), *General comment no. 35 on Article 9*, para. 59.

pay; and private communication with counsel must be facilitated in a timely way. These principles are reinforced by the UN Working Group on Arbitrary Detention's report, United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.[37]

Both General Comment 35 and the Body of Principles provide for various forms of oversight, from individual review mechanisms (such as the requirement that detentions be subject to the effective control of a judicial or other competent review authority[38]) to supervision of institutions of detention by independent, qualified and experienced representatives of "a competent authority".[39] Transparency is essential to fairness, in part because of the connection between the dangers of opaque state authority and a lack of oversight over detention. Secret detention is recognized internationally as a grave human rights violation of the most serious nature. In 2010, UN experts released a UN Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism. Although of course AGA detentions do not occur in the context of any terrorism response, the study's discussion about the human rights implications of "secret detention" is more general and applies explicitly to detention in the context of "mental illness".[40] The study explains that:

> ***"a person is kept in secret detention if State authorities acting in their official capacity, or persons acting under the orders thereof, with the authorization, consent, support or acquiescence of the State, or in any other situation where the action or omission of the detaining person is attributable to the State, deprive persons of their liberty; where the person is not permitted any contact with the outside world ('incommunicado detention'); and when the detaining or otherwise competent authority denies, refuses to confirm or deny or actively conceals the fact that the person is deprived of his/her liberty hidden from the outside world, including, for example family, independent lawyers or non-governmental organizations, or refuses to provide or actively conceals information about the fate or whereabouts of the detainee. In the present report, the term 'detention' is used synonymously with 'deprivation of liberty', 'keeping in custody' or 'holding in custody ...'"***[41]

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[37] United Nations General Assembly, *Report of the Working Groups on Arbitrary Detention, United Nations Basic Principles and Guidelines on Remedies and Procedures*, paras. 12-15, 67-71, 119.

[38] UN Human Rights Committee (HRC), *General comment no. 35 on Article 9,* para. 15; *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principle 4.

[39] *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principle 29

[40] Scheinin, Martin, et. al. UN Human Rights Council, Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms, *Joint Study On Global Practices In Relation To Secret Detention In The Context Of Countering Terrorism*, A/HRC/13/42, 20 May 2010, 14, para. 18, https://digitallibrary.un.org/record/677500?v=pdf; See also UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, paras. 4, 7, 19, 40.

[41] Scheinin, Martin, et al., UNHRC, *Joint Study On Global Practices In Relation To Secret Detention In The Context Of Countering Terrorism*, para. 8.

The study went on to find that "secret detention is irreconcilable with international human rights law.... It amounts to a manifold human rights violation that **cannot be justified under any circumstances, including during states of emergency**."[42] Secret detention may amount to enforced disappearance, and even cruel or unusual treatment or punishment.[43]

Protections against arbitrary detention are also echoed in the *Canadian Charter of Rights and Freedoms* and have virtually the same language as the ICCPR.[44] Sections 9 and 10 of the Charter set out the minimum standards for detentions in Canada. Section 9 of the Charter provides that everyone has the right not to be arbitrarily detained or imprisoned. In order for the detention not to be arbitrary, it must be authorized by law, the law must be reasonable and the detention must be reasonably carried out.[45] Section 10 of the Charter guarantees the rights on detention to be informed promptly of the reasons, to be informed of the right to retain counsel and to retain counsel, and to have the validity of the detention reviewed by the court. Section 7 of the Charter also protects the right to liberty, which cannot be deprived except in accordance with the principles of fundamental justice.

Liberty protections for people with disabilities

In particular regard to the rights of people with disabilities, General Comment 35 contains the following guidance:

- state parties should revise outdated law and practices in the field of mental health to avoid arbitrary detention
- state parties should make available adequate community-based or alternative social services for persons with psychosocial disabilities in order to provide less restrictive alternatives to detentions
- the existence of a disability itself cannot justify a deprivation of liberty. Any deprivation of liberty must be necessary and proportionate for the purpose of protecting the individual in question from serious harm or preventing injury to others
- detention of a person with disabilities must be a last resort and for the shortest appropriate period of time and must be accompanied by adequate procedural and substantive safeguards established by law
- procedures should ensure respect for the views of the individual detained and ensure that any representative genuinely represents and defends their wishes
- deprivation of liberty must be re-evaluated at regular interval and individuals must be assisted in accessing remedies[46]

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[42] Scheinin, Martin, et al., UNHRC, *Joint Study On Global Practices In Relation To Secret Detention In The Context Of Countering Terrorism*, para. 17; UN Human Rights Committee (HRC), *General comment no. 35: Article 9,* paras. 35, 46, 56 (emphasis added).
[43] Scheinin, Martin, et al., UNHRC, *Joint Study On Global Practices In Relation To Secret Detention In The Context Of Countering Terrorism*, paras. 28, 32.
[44] This description of Charter protections is provided as a context; for the sake of clarity, the Commissioner made the findings in this report based on international human rights obligations and the *Human Rights Code.*
[45] *R. v. Grant*, paras 54-56.
[46] UN Human Rights Committee (HRC), *General comment no. 35 on Article 9*, para. 19.

People with disabilities also benefit from the protections in the *Convention of the Rights of Persons with Disabilities* (CRPD),[47] which aims to secure respect for the autonomy and agency of persons living with disabilities and safeguard their liberty to the greatest extent possible. The CRPD was adopted with a view to promoting de-institutionalization and integration into community. Article 12 of the CRPD guarantees the right to equality before the law for people with disabilities. Canada has a reservation to Article 12 to the extent that it requires Canada to eliminate all substitute decision making models; however, the reservation does not exempt the application of Article 12 to detentions under the AGA.[48] Article 14 protects people with disabilities from arbitrary and unlawful deprivations of their liberty. Moreover, Article 14 specifies that "the existence of a disability shall in no case justify a deprivation of liberty". Article 19 protects the right of persons with disabilities to live independently and be included in their communities.

The treaty body responsible for monitoring compliance with the CRPD, the Committee on the Rights of Persons with Disabilities, has also issued General Comments. These comments include General Comment No. 5 on Article 19[49] and General Comment No. 1 on Article 12.[50] The CRPD Committee has also issued Guidelines on the right to liberty and security of persons with disabilities.[51] These three documents outline the following on the rights of persons with disabilities:

- Historically, persons with disabilities have been denied the right to choose where they live due to the presumption that they are unable to live independently. Resources have been invested in institutions instead of in developing possibilities for persons with disabilities to live in their communities.[52]
- Pursuant to Article 14 of the CRPD, all persons with disabilities, especially persons with intellectual disabilities and psychosocial disabilities, have a right to liberty. Article 14 also prohibits discrimination on the basis of disability in the exercise of that right.[53]
- Signatory states must take all relevant measures to ensure that persons with disabilities who are detained can live independently and participate fully in all aspects of daily life in their place of detention. This includes ensuring their access, on an equal basis with others, to the various areas and services available, such as bathrooms, yards, libraries, study areas, workshops and medical, psychological, social and legal services.[54]

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[47] *Convention on the Rights of Persons with Disabilities*, 2515 UNTS 3, 12 December 2006, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities.

[48] Canada's declaration and reservation to Article 12 of the CRPD, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&clang=_en#EndDec.

[49] UN Committee on the Rights of Persons with Disabilities, *General comment No. 5 on Article 19 - the right to live independently and be included in the community*, CRPD/C/GC/5, 27 October 2017, https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no5-article-19-right-live.

[50] UN Committee on the Rights of Persons with Disabilities, *General comment No. 1 on Article 12 – Equal recognition before the law*, CRPD/C/GC/1, 19 May 2014, https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-1-article-12-equal-recognition-1.

[51] UN Committee on the Rights of Persons with Disabilities, Report of the Committee on the Rights of Persons with Disabilities, A/72/55, 2017, Annex, *Guidelines on the right to liberty and security of persons with disabilities*, https://documents.un.org/doc/undoc/gen/g17/114/97/pdf/g1711497.pdf.

[52] UN Committee on the Rights of Persons with Disabilities, *General comment No. 5 on Article 19,* para 1.

[53] UN Committee on the Rights of Persons with Disabilities, *Guidelines on the right to liberty and security of persons with disabilities*, para. 3.

[54] UN Committee on the Rights of Persons with Disabilities, *Guidelines on the right to liberty and security of persons with disabilities*, para. 18.

- Monitoring and review mechanisms must be implemented in relation to persons with disabilities who are deprived of their liberty. These mechanisms cannot under any circumstances prolong arbitrary detention and must lead to the release of those detained arbitrarily.[55]
- Persons with disabilities who are arbitrarily or unlawfully deprived of their liberty are entitled to have access to justice to review the lawfulness of their detention.[56]
- Involuntary institutionalization on the grounds of impairment or associated circumstances such as presumed "dangerousness" or other factors is often caused or increased by a lack of disability specific support services. Implementing Article 19 of the CRPD, the right to live independently in community, will thus ultimately prevent violation of Article 14.[57]

There is some divergent authority on whether international human rights law allows for temporary deprivation of liberty on the basis of lack of capacity, where such deprivation is required to protect against death or serious bodily harm. Some articles of the CRPD seem to allow these forms of detention. Indeed a prohibition of detention extending to lawful, non-arbitrary, emergency, short term detention required to protect against death and serious bodily harm is difficult to reconcile with Articles 10 and 11 of the CRPD and Article 9 of the ICCPR. Article 10 of the CPRD protects persons with disabilities' right to life and compels state parties to take all necessary measures to ensure its effective enjoyment on an equal basis with others. Article 11 speaks to how state parties must take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk.

In addition, guidance and committee commentary on both the CRPD and ICCPR seem to undermine strict prohibition against detention on the basis of disability when they discuss state parties' obligations to provide procedural and other rights protections when a person is detained on that basis. In these discussions, it is implied that a person may be detained on the basis of disability as long as those obligations are met. It may be that this is aimed at the progressive realization of the full rights of people with disabilities including the elimination of detention.

On the other hand, however, while Article 14 of the CRPD could be interpreted to mean that liberty could be denied when done in accordance with law and not done arbitrarily, the CRPD Committee has adopted an interpretation of Article 14 as imposing an absolute ban on deprivation of liberty on the basis of actual or perceived impairment.

What is clear is that both of these conventions contain strong protection against arbitrary or unlawful detention of persons with disabilities on the basis of real or perceived incapacity.

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[55] UN Committee on the Rights of Persons with Disabilities, *Guidelines on the right to liberty and security of persons with disabilities*, para. 19.
[56] UN Committee on the Rights of Persons with Disabilities, *Guidelines on the right to liberty and security of persons with disabilities*, para. 24.
[57] UN Committee on the Rights of Persons with Disabilities, *General comment No. 5 on Article 19*, para. 82.

Equality protections

Enabling systemic discrimination through disproportionate arbitrary interference with the liberty of some groups and more than others violates a number of other international human rights obligations. For example, the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD)[58] and the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)[59] respectively prohibit the unequal treatment of racialized persons and women, as the UN *Declaration on the Rights of Indigenous Peoples* (which is affirmed to apply to the laws of British Columbia in s. 2(a) of the *Declaration on the Rights of Indigenous Peoples Act*[60]) prohibits discrimination against Indigenous people.

The ICCPR prohibits any distinctions, exclusions, restrictions or preferences which are based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.[61] Furthermore, the Economic, Social and Cultural Rights Committee notes that the protections under that Convention extend to non-discrimination on the basis of social condition, including living in poverty or being unhoused.

Similarly, the right to substantive equality, on the basis of a number of enumerated and analogous grounds, is also protected by s. 15 of the Charter.

B.C.'s *Human Rights Code*

Under s. 8(1)(b) of B.C.'s *Human Rights Code*, a person must not discriminate against a person or class of persons because of their Indigenous identity, race, colour, ancestry, physical or mental disability, sex, gender identity or expression or age regarding services customarily available to the public, such as AGA services, unless there is a *bona fide* and reasonable justification. All services provided under the AGA, including emergency assistance, fall within the scope of s. 8.

Determining whether there has been a breach of the *Human Rights Code* involves a two-step analysis.[62] At the first step, the individual or group must establish a *prima facie* case of discrimination by showing:

1. they have a characteristic which is protected under the Code;
2. they have experienced an adverse effect; and
3. that the protected characteristic was a factor in the adverse treatment.

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[58] United Nations General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 660 UNTS 195, 21 December 1965, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial.

[59] United Nations General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 1249 UNTS 13, 18 December 1979, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women.

[60] *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c. 44, https://canlii.ca/t/544c3.

[61] UN Human Rights Committee, *General Comment 18: Non-discrimination*, para 7.

[62] *British Columbia (Public Service Employee Relations Commission) v. B.C.G.E.U.*, [1999] 3 S.C.R. 3 at paras. 54-55, https://canlii.ca/t/1fqk1.

It is not necessary to prove causation; instead, there must simply be a "connection", or the protected characteristic must be a factor in the negative treatment.[63]

The next step in the legal analysis is to determine whether the actions of the designated agencies or government is justified as a *bona fide* requirement. The test is whether they:[64]

1. adopted the standard for a purpose or goal rationally connected to the function being performed;
2. adopted the standard in good faith, in the belief that it is necessary for the fulfilment of the purpose or goal; and
3. the standard is reasonably necessary to accomplish its purpose or goal, because the defendant cannot accommodate persons with the characteristics of the claimant without incurring undue hardship, whether that hardship takes the form of impossibility, serious risk or excessive cost.

Discrimination refers to both direct discrimination and adverse impact discrimination. Direct discrimination occurs when there is differential treatment on the basis of one of the protected grounds.[65] Adverse impact discrimination occurs when a seemingly neutral law or policy has a disproportionate impact on members of groups based on their protected characteristics.[66] Importantly, intent is not required to establish that a practice is discriminatory. Adverse impact discrimination violates the norm of substantive equality, which looks at the impact of a law or policy to see whether the outcome is equal for different groups of people. Substantive equality considers social and historical context and recognizes that sometimes in order for an outcome to be fair, laws or policies may need to treat people differently.[67]

While the Code does not speak directly to the rights of people who are unhoused or drug and alcohol users, it does protect against discrimination on the basis of disability, age and gender. The protections against discrimination at international law are much broader, as noted above.

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[63] *Moore v. British Columbia (Education),* 2012 SCC 61 (CanLII), para. 33, https://canlii.ca/t/ftp16; UN Human Rights Committee, *General Comment 18: Non-discrimination*, (1989), para. 7, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FGEC%2F6622&Lang=en; UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/20, 2 July 2009, para. 10, https://documents.un.org/doc/undoc/gen/g09/434/05/pdf/g0943405.pdf.

[64] *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights),* 1999 CanLII 646 (SCC), [1999] 3 S.C.R. 868, https://canlii.ca/t/1fql1.

[65] *Ont. Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (SCC), [1985] 2 S.C.R. 536 at 551, https://canlii.ca/t/1ftxz; *British Columbia (Public Service Employee Relations Commission) v.* BCGSEU, 1999 CanLII 646 (SCC), [1999] 3 SCR 868, para 27: https://canlii.ca/t/1fqk1

[66] *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 (CanLII), para. 32, https://canlii.ca/t/gk9vn.

[67] *Fraser v. Canada (Attorney General)*, 2020 SCC 28 (CanLII), https://canlii.ca/t/jb370; *Ont. Human Rights Comm. v. Simpsons-Sears*, 551; *British Columbia (Public Service Employee Relations Commission) v.* BCGSEU, at para 41, https://canlii.ca/t/1fqk1; *CN v. Canada (Canadian Human Rights Commission)*, 1987 CanLII 109 (SCC), [1987] 1 S.C.R. 1114 at 1138, https://canlii.ca/t/1lpg8.

Relevant legislation in British Columbia

As noted earlier, in British Columbia, the *Community Care and Assisted Living Act*, *Health Care (Consent) and Care Facility (Admission) Act* and the *Mental Health Act* interact with the *Adult Guardianship Act* in regard to adults who may be experiencing abuse and neglect.

Community Care and Assisted Living Act, SBC 2002, c. 75

The *Community Care and Assisted Living Act* (CCALA) replaced the *Community Care Facility Act* in 2004. The CCALA and associated regulations establish the regulatory framework for licensed residential care facilities and assisted living residences. The CCALA and regulations establish standards, including standards for facility admission and oversight mechanisms.

Health Care (Consent) and Care Facility (Admission) Act, RSBC 1996, c. 181

The *Health Care (Consent) and Care Facility (Admission) Act* regulates consent to health care, including advance directives.[68] Part 3 of the HCCCFAA governs admission to a care facility, including admission of adults subject to an emergency measure under the AGA. Part 3 is a relatively recent addition to the HCCCFAA; it was made law in November 2019.

Mental Health Act, RSBC 1996, c. 288

The *Mental Health Act* (MHA) provides authority, criteria and procedures for voluntary and involuntary admission to psychiatric facilities for treatment. Under the MHA, a person can be admitted as an involuntary patient if a physician or nurse practitioner has examined the person and believes that they have a mental disorder; require treatment in or through a designated facility; require care, supervision and control to prevent substantial mental or physical deterioration or for the protection of themselves or others and; cannot be admitted as a voluntary patient.[69]

An involuntary patient can also be placed on extended leave in the community. While the criteria for detention is different, the MHA contains more procedural safeguards against arbitrary detention than the AGA.

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[68] The HCCCFAA defines an advance directive as "a written instruction made by a capable adult that gives or refuses consent to health care in the event that [they are] not capable of giving the instruction at the time the health care is required."

[69] MHA, s. 22.

B.C.'s *Adult Guardianship Act*, RSBC 1996, c. 6

The *Adult Guardianship Act* was created as a part of a 1993 suite of legislative reforms to substitute decision-making and guardianship statutes.[70] As stated earlier, the AGA contains guiding principles and the framework for designated agencies to respond to reports of abuse, neglect and self-neglect of vulnerable or incapable adults.

Notably, not all parts of the 1993 statute are currently in force. Part 1 (Introductory Provisions) and Part 3 (Support and Assistance for Abused and Neglected Adults) were not proclaimed into force until 2000. Part 2 (Court Appointed Guardians) was intended to replace the *Patients Property Act* to create an adult guardianship framework that better respected human rights,[71] however, it still has not been proclaimed into force. Part 2.1 (Statutory Property Guardians), which provides for circumstances when a statutory property guardian may be appointed and for some of the functions of the Public Guardian and Trustee, was enacted in 2014. It is unclear why a suite of legislation was passed in the 1990s and then brought into force through a patchwork of selective and delayed proclamations.

Part 3 of the AGA has not been significantly amended since it came into force. Since then, Canada ratified the *Convention on the Rights of Persons with Disabilities* (discussed on page 24) in 2010.

As referenced above, the Act is to be interpreted and administered in accordance with the guiding principles.[72] Specifically

- all adults are entitled to live in the manner they wish and to accept or refuse support, assistance or protection as long as they do not harm others and they are capable of making decisions about those matters;
- all adults should receive the most effective, but the least restrictive and intrusive, form of support, assistance or protection when they are unable to care for themselves or their financial affairs;
- the court should not be asked to appoint, and should not appoint, guardians unless alternatives, such as the provision of support and assistance, have been tried or carefully considered.

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[70] The Canadian Centre for Elder Law Studies, *A Comparative Analysis of Adult Guardianship Laws in BC, New Zealand and Ontario*, 2006, 5. https://www.bcli.org/sites/default/files/Comparative_Analysis_of_Adult_Guardianship_Laws.pdf.

[71] The Canadian Centre for Elder Law Studies, *A Comparative Analysis of Adult Guardianship Laws in BC, New Zealand and Ontario*, 5.

[72] AGA, s. 2.

The purpose of Part 3 of the AGA is to create a framework to provide for support and assistance for abused and neglected adults who are unable to seek support and assistance because of physical restraint, a physical handicap that limits their ability to seek help or an illness, disease, injury or other condition.[73] The AGA defines abuse, neglect and self-neglect:[74]

> **"abuse"** means the deliberate mistreatment of an adult that causes the adult
>
> (a) physical, mental or emotional harm, or
>
> (b) damage or loss in respect of the adult's financial affairs,
>
> and includes intimidation, humiliation, physical assault, sexual assault, overmedication, withholding needed medication, censoring mail, invasion or denial of privacy or denial of access to visitors;
>
> **"neglect"** means any failure to provide necessary care, assistance, guidance or attention to an adult that causes, or is reasonably likely to cause within a short period of time, the adult serious physical, mental or emotional harm or substantial damage or loss in respect of the adult's financial affairs, and includes self-neglect;
>
> **"self-neglect"** means any failure of an adult to take care of himself or herself that causes, or is reasonably likely to cause within a short period of time, serious physical or mental harm or substantial damage or loss in respect of the adult›s financial affairs and includes
>
> (a) living in grossly unsanitary conditions,
>
> (b) suffering from an untreated illness, disease or injury,
>
> (c) suffering from malnutrition to such an extent that, without intervention, the adult's physical or mental health is likely to be severely impaired,
>
> (d) creating a hazardous situation that will likely cause serious physical harm to the adult or others or cause substantial damage to or loss of property, and
>
> (e) suffering from an illness, disease or injury that results in the adult dealing with his or her financial affairs in a manner that is likely to cause substantial damage or loss in respect of those financial affairs.

[73] AGA, s. 44.
[74] AGA, s. 1, "abuse", "neglect", "self-neglect".

Roles and Responsibilities

There are a number of actors responsible for the administration and fulfilment of the AGA and related legislation.

The **Ministry of Attorney General** is responsible for the *Adult Guardianship Act*.

The **Ministry of Health** is responsible for the *Mental Health Act,* the *Community Care and Assisted Living Act* and the *Health Care (Consent) and Care Facility (Admission) Act*.

The **Public Guardian and Trustee** (PGT) is responsible for designating agencies to provide support and assistance to adults.[75] As described below, the PGT has designated the regional health authorities, Providence Health Care and Community Living BC to do this work. The PGT is also authorized by the AGA to organize community networks to provide support and assistance to abused or neglected adults. The PGT accomplishes this by coordinating a range of province-wide standing committees and special events involving service partners and other participants with an interest in issues concerning the reduction of abuse and neglect of vulnerable adults.[76] The PGT also co-ordinates the Adult Guardianship Act Provincial Advisory Committee (AGPAC).[77]

The Public Guardian and Trustee is also empowered to investigate reports that adults' committees, representatives or attorneys are misusing their authority and is one of the parties that may apply to court to vary or revoke legal instruments or orders providing for committees, representatives' and attorneys' authority.[78]

A **designated agency** is "a public body, organization or person designated by regulation of the Public Guardian and Trustee for the purposes of Part 3 of the Act."[79] Designated agencies are required to respond to reports of adults being abused or neglected. They work to provide adults with support and assistance and have the ability to provide emergency assistance under s. 59 of the AGA.

The seven public bodies that have been designated by the PGT under the *Designated Agencies Regulation* are **Fraser Health Authority** (FHA), **Interior Health Authority** (IHA), **Northern Health Authority** (NHA), **Vancouver Coastal Health Authority** (VCHA), **Vancouver Island Health Authority** (VIHA), **Providence Health Care** (PHC) and **Community Living British Columbia** (CLBC).[80]

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[75] AGA, ss. 1 and 61(a.1).
[76] AGA, s. 61(b); See Public Guardian and Trustee of British Columbia, *2022-2023 Annual Report*, 25, https://www.trustee.bc.ca/sites/default/files/2024-07/2022-2023-annual-report_1.pdf.
[77] The AGPAC is a provincial advisory with a mandate to work to facilitate the most effective mandated response possible within a broader community context for adults who are abused, neglected and self-neglected or who otherwise find themselves in vulnerable circumstances. The members of the AGPAC are the designated agencies and the PGT.
[78] *Power of Attorney Act*, RSBC 1996, c. 370 ss. 34-35, https://canlii.ca/t/5642d; *Representation Agreement Act*, RSBC 1996, c. 405, ss. 30-31, https://canlii.ca/t/563q1; *Patients Property Act*, RSBC 1996, c. 349, s. 6, https://canlii.ca/t/52cd7.
[79] AGA, s. 1.
[80] *Designated Agencies Regulation*, BC Reg 19/2002, https://canlii.ca/t/jjwx.

Responding to reports of abuse, neglect or self-neglect

Under the AGA, any person who is concerned that an adult is being abused or neglected and is unable to seek support and assistance on their own may report the circumstances to a designated agency (s. 46(1)).

If the designated agency determines the adult needs support and assistance, they may refer the adult to services, inform the Public Guardian and Trustee and/or investigate to determine if the adult is abused or neglected (s. 47(3)). If the designated agency undertakes an investigation and determines that a person has been abused or neglected and that they are unable to seek support and assistance, the designated agency may prepare a support and assistance plan outlining the services the designated agency believes are needed (s. 51(1)(g)). A support and assistance plan identifies any services needed by the adult—including health care, accommodation, social, legal or financial services—that the designated agency believes the adult requires to prevent or remedy abuse, neglect or self-neglect. Designated agencies are obligated to involve the adult to the greatest extent possible in decisions about seeking support and assistance and preventing abuse, neglect and self-neglect. Adults are presumed capable of accepting or rejecting the services that the designated agency is offering.

Section 53(4) of the AGA provides that if the adult decides not to accept the services proposed in a support and assistance plan and the adult appears to be incapable of making that decision (for example, the decision not to accept the proposed services), the designated agency may ask the PGT to arrange for an assessment of whether the adult is incapable under s. 53(5).

The PGT has a roster of assessors from which to choose when a designated agency makes the request. The choice of an assessor depends on their experience with relevant population groups or diagnoses, geographic location and availability. If an assessor selected by the PGT assesses the adult as capable of refusing consent to the services proposed in the plan, then the adult's decision must be respected. If the assessor concludes the adult is incapable of refusing the plan, the designated agency can apply to Provincial Court for an order authorizing the designated agency to provide the services in the plan without the adult's consent (s. 54(1)). This is known as a support and assistance order. In making a court order for support and assistance, a court must choose the most effective but the least restrictive and intrusive way of providing support and assistance (s. 56(5)). Notably, the Provincial Court can order involuntary admission and detention in a care facility, hospital or other facility, as well as imposing other services without consent.

Most of the designated agencies have identified staff to conduct AGA investigations into reports of abuse and neglect.[81] These staff are often referred to as "designated responders" by the health authority designated agencies and "facilitators" by Community Living BC, although this is not a role identified or delegated in the AGA. The number of designated responders in each designated agency varies from as many as 350 in the Vancouver Coastal Health Authority to none in the Northern Health Authority. NHA does not have specific staff who respond to AGA abuse and

[81] VCHA, *Responding to Abuse, Neglect or Self-Neglect of Vulnerable Adults: For Designated Responder (DR) and Designated Responder Coordinators (DRCs)*, 1; VIHA, *Abuse, Neglect and Self-Neglect of Vulnerable Adults* 9.1.18P, 1; PHCS, *Adult Protection: Duty to Report*, 1; IHA, *Policy AL0800– Adult Guardianship Act (Part 3) Designated Agency Policy*, 14 December 2022, 6.

neglect reports; instead, staff refer investigations to the "most appropriate clinical responder".[82] Designated agencies noted that some designated responders and facilitators rarely encounter situations where they might use s. 59 to detain an adult given how relatively infrequently it is used compared to the number of staff who are identified as designated responders and facilitators.

In interviews with representatives of the designated agencies, the Commissioner heard that responding to reports of abuse and neglect is one of the many job responsibilities of designated responders.[83] Designated responders may be Social Workers, Registered Nurses, Occupational Therapists, mental health clinicians, Registered Psychiatric Nurses or Psychologists.[84] Indeed, the AGA does not establish experience or qualification requirements for designated responders at all.

The Commissioner also learned through interviews with designated agency representatives that while some designated agencies have mandatory training for designated responders (VCHA, IHA, Providence, VIHA), NHA recommends but does not require training and FHA requires training but does not monitor whether training has been completed. It is extraordinary that in FHA and NHA, staff are potentially able to investigate reports of abuse and neglect of adults and to detain adults under s. 59(2) without completing any related training. It is also notable that none of the designated agencies require designated responders to complete ongoing training, although some optional training is offered, and the provincial government has not created any province-wide training for designated responders.

Designated agencies do, however, generally require specialized training for supervisory staff who support, guide and consult with designated responders.[85] Most designated agencies have multiple levels of support with regional staff and additional support through a centralized adult guardianship office and all agencies have identified an adult guardianship lead.

According to health authority guidelines, staff generally must consult their supervisor before taking further action when they determine that the use of emergency measures may be warranted.[86] Notably, NHA does not require staff to consult supervisors, but notes that this is possible if it is unclear what actions need to be taken in response to a report. In some designated agencies, the staff may also consult the adult guardianship lead.

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[82] NHA, *Administrative Policy and Procedure 4-2-2-140, Adult Guardianship*, August 2019, 3.

[83] BCOHRC interviews with VIHA, September 26, 2024; CLBC, October 3, 2024; PHCS, October 31, 2024; IHA, November 1, 2024; VCHA, November 1, 2024; FHA, October 30, 2024.

[84] BCOHRC interviews with VIHA, September 26, 2024; CLBC, October 3, 2024; PHCS, October 31, 2024; IHA, November 1, 2024; VCHA, November 1, 2024; FHA, October 30, 2024.

[85] VCHA, *Responding to Abuse, Neglect or Self-Neglect of Vulnerable Adults: For Designated Responder (DR) and Designated Responder Coordinators (DRCs)*, 1; VIHA, *Abuse, Neglect and Self-Neglect of Vulnerable Adults 9.1.18P*, 1; PHCS, *Adult Protection: Duty to Report*, 1; FHA, *Clinical Policy: Adult Protection - Responding to Abuse, Neglect, and Self-Neglect of Vulnerable Adults under Part 3 of the Adult Guardianship Act*,3.

[86] VCHA, *Responding to Abuse, Neglect or Self-Neglect of Vulnerable Adults: For Designated Responder (DR) and Designated Responder Coordinators (DRCs)*, 2; FHA, *Adult Protection - Providing Emergency Assistance to Vulnerable Adults in Accordance with Section 59 of the Adult Guardianship Act (AGA)*, 2; IHA, *General Interprofessional Practices, Adult Guardianship Act, Emergency Assistance*, October 2020, 2, 4.1; CLBC, *Adult Guardianship Procedures and Practice Guide*, 2022, 13, 5.4 and 20, 8.2; VIHA, *Adult Guardianship Act Emergency Assistance* 9.3.7G, 1, 1.0; PHCS, *Document # B-00-07-14503, Adult Protection: Abuse, Neglect or Self-Neglect of Vulnerable Adults. Designated Responder Guideline*, 30 March 2021, 5; NHA, *Administrative Policy and Procedure 4-2-2-140, Adult Guardianship*, August 2019, 3, 4.

Provision of emergency assistance

The AGA provides designated agencies with significant powers to act in emergency circumstances. It is these emergency powers in s. 59 of the AGA that are the focus of this Inquiry. The designated agencies can use these powers to act, without the adult's consent, where they believe:

- the adult is apparently abused or neglected (s. 59(1)(a));
- it is necessary to act without delay in order to preserve the adult's life, prevent serious physical or mental harm to the adult, or protect the adult's property from significant damage or loss (s. 59(1)(b); and
- the adult is apparently incapable of giving or refusing consent (s. 59(1)(c)).

The representative from Interior Health provided the following perspective for how these criteria are applied in IHA:

- 59(1)(a) – *"We're really focusing on ... are there significant red flags, significant concerns that we have or that information has been provided to us that leads us in this moment of crisis, to strongly believe that this adult looks like they're being abused or looks like they're being neglected.... Because it's a crisis and you can't always get all the stuff you need in the crisis that word apparent is very important here. So is there apparent abuse or neglect is what we're looking for."*
- 59(1)(b) – *"It's B that distinguishes this part of the legislation from the rest of the legislation, so it's a very important question... So like in this moment right now, if we don't act, will the adult most likely perceivably die? Or to prevent serious physical or mental harm, we often look at if we don't act, is there going to be some sort of irreparable harm or damage to this adult that we can't prevent. So a loss of a limb, for example. So this is a really important question and this is usually the question that when we go through the criteria check in a consult, we say nope, the criteria is not met yet. So if you were focusing just on those 59(1)(a) and (c), there would be an overuse of section 59."*
- 59(1)(c) – *"So one of the things we have to appreciate in healthcare is that people's capacity fluctuates, right? Not all types of incapability are chronic in nature and on a kind of general downward slope. People's cognition goes up, people's cognition goes down...So when we're looking at this criteria here, we're focusing on in this current moment, do we have reason to believe that the adult is not capable? It's a crisis, so we don't have all the time to do those formal kind of psychiatric assessments and things like that. So we're going off the 'apparent' evidence we have in that moment to make a decision on if they are capable or not."*

In these circumstances, under s. 59(2) designated agencies can:

- enter any premises where the adult may be located, without a court order or a warrant, and use any reasonable force that may be necessary in the circumstances (s. 59(2)(a));
- remove the adult from the premises and convey them to a safe place (s. 59(2)(b));
- provide the adult with emergency health care (s. 59(2)(c));
- inform the Public Guardian and Trustee that the adult's financial affairs need immediate protection (s. 59(2)(d)); and
- take any other emergency measure that is necessary to protect the adult from harm (s. 59(2)(e)).

The AGA does not require that there be an ongoing investigation into abuse and neglect in order for a designated agency to provide emergency assistance. In theory this means that designated agencies do not need to take any other steps or have any prior involvement with the adult before they use s. 59. Some designated agency policies confirm that if the criteria for emergency assistance are met, it can be provided "at any point after receiving a report of abuse or neglect."[87] In practice, however, designated agencies recognize that the use of s. 59 is intrusive and, consistent with the guiding principles of the AGA,[88] should not generally be invoked during the designated agency's initial interactions with an adult. Several designated agency policies provide[89] (and designated agency representatives indicated in interviews) that the use of s. 59 is generally a last resort when all less intrusive options have been considered or tried.[90]

Conclusion of emergency assistance

As discussed in the methodology section above, during the Inquiry, the Commissioner received data from the designated agencies on their use of s. 59 of the AGA between January 2018 and September 2023. This data is included in various sections of the findings below. For the purpose of this section of the report, the Commissioner requested data on what happened to the adult after their period of detention ended. This data is outlined in the table below.

Many adults who are detained under s. 59 are discharged home with informal supports or with a more formal support and assistance plan. Sometimes the adult remains in hospital with consent after the detention under s. 59 ends. The following table illustrates the other ways that adults' detention under the emergency provisions of the AGA ended in the January 2018 to September 2023 period. These numbers are based on data by the designated agencies in response to the Commissioner's order.

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[87] CLBC, *Adult Guardianship Procedures and Practice Guide*, 2022, 19, 8.1.
[88] AGA, s. 2(b).
[89] FHA, *Adult Protection - Providing Emergency Assistance to Vulnerable Adults in Accordance with Section 59 of the Adult Guardianship Act (AGA)*, 1; VCHA, *Responding to Abuse, Neglect or Self-Neglect of Vulnerable Adults: For Designated Responder (DR) and Designated Responder Coordinators (DRCs)*, 7.
[90] BCOHRC interviews with VIHA, September 26, 2024; CLBC, October 3, 2024; PHCS, October 31, 2024; IHA, November 1, 2024; VCHA, November 1, 2024; FHA, October 30, 2024.

From January 2018 to September 2023, about three in 10 cases (29.4 per cent), adults were transferred to long term care and admitted with substitute consent.[91]

Table 1: Number of detentions by how detentions ended, B.C., 2018-2023*

CATEGORY	B.C.	
	DETENTIONS	%
TOTAL	**340**	**100.0%**
Certified under the MHA	56	16.5%
Admitted to long-term care with substitute consent (after 2019)	100	29.4%
Subjected to a court ordered support and assistance plan	3	0.9%
Passed away during AGA detention/hospitalization	3	0.9%

*The sum across all categories is lower than 340 detentions and 100 per cent because we have not included data on adults who were discharged home with informal supports or with formal support and assistance plan.

Habeas corpus applications

The AGA does not establish a mechanism for someone detained under s. 59 to challenge their detention if they disagree with the designated agency's conclusion that detention is required or meets the AGA criteria. Unlike detentions under the *Mental Health Act,* there are no rights to reassessment or review to any tribunal. This means that adults have no recourse under the AGA to seek independent review of what's happening to them; however, they may still rely on the courts.

International human rights standards reflected in the Charter provide for a right to apply to court for anyone experiencing any form of detention in Canada.[92] In any case where a person is kept in a hospital, care facility or other facility under the AGA and wants to challenge their detention, they may be able to apply to the Supreme Court of British Columbia for an order of *habeas corpus*. *Habeas corpus* is a legal remedy that allows any person who believes their detention is unlawful to ask the court to review the basis for the detention and order the release of the detainee if detention cannot be justified.[93]

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[91] Substitute consent is consent given by a substitute decision-maker when an adult is unable to make decisions on their own behalf. In B.C., a substitute decision-maker can be a court-appointed guardian, representative appointed through a representation agreement or close family member.

[92] ICCPR, Article 9(4); UN Human Rights Committee (HRC), *General comment no. 35 on Article 9*, para. 39; Article XXV of the *American Declaration of the Rights and Duties of Man,* https://www.oas.org/en/iachr/mandate/Basics/declaration.asp; *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s. 10(c), https://canlii.ca/t/ldsx.

[93] *Mission Institution v.* Khela, 2014 SCC 24 (CanLII), [2014] 1 S.C.R. 502, https://canlii.ca/t/g69pq.

While access to the courts to review the legality of detentions is a critical check on state power, *habeas corpus* applications for AGA detainees have been rare because many detainees may not be aware of their rights or may have difficulty exercising them, in particular because of a lack of access to counsel. Since s. 59 of the AGA came into force in 2000, there has only been one reported decision on an application for *habeas corpus* from an AGA detainee.[94]

Although *habeas corpus* can be an effective remedy when accessible, there are associated costs with proceeding in a BC Supreme Court. For example, a family member interviewed by BCOHRC who took this route reported spending over a hundred thousand dollars to afford counsel.

Court ordered support and assistance

A designated agency may apply for a court order authorizing the designated agency to involuntarily admit and detain an adult in a care facility, hospital or other facility at any point in time. Therefore, the provision of emergency assistance could end with the designated agency successfully applying for a court ordered support and assistance plan. Such a plan may require the adult to live in a care facility, hospital or other facility.

Where support and assistance—including detention in a care facility, hospital or other facility—is imposed in a court order, such an order may be in place for up to one year. A designated agency can apply to renew the order for a further period of up to one year.[95] However, in *N.C. v. Fraser Health Authority,* the B.C. Supreme Court found that, in cases where orders are renewed, the adult should be released after the two years expire.

There is no authority in the AGA for a support and assistance order to be renewed after the expiry of the two years.[96] However, the court in *N.C.* found that there is nothing in the AGA that prevents the designated agency from seeking a new support and assistance order. To do so, the agency must comply with the steps in ss. 47–56 of the AGA and ensure the evidence supports a finding that the adult is abused or neglected and unable to seek support and assistance.[97] There are also obligations for designated agencies to review the need for support and assistance orders on an ongoing basis.

Detentions ending with admission to care facility with substitute consent

Notably, s. 24(2) of the HCCCFAA provides that a person subject to an emergency measure under s. 59 of the AGA may be admitted without consent to a care facility, following which the manager must obtain substitute consent to continued admission within 72 hours.

However, the data indicates that, after s. 24(2) of the HCCCFAA was brought into force on Nov 4, 2019, only one individual was admitted to care facilities under this section, although adults were transferred to care facilities and admitted with substitute consent on 98 occasions. This means that the mechanism in s. 24(2) enabling adults to be admitted to care facilities without consent for 72 hours has not been commonly used and therefore is not terribly effective in providing a mechanism to admit adults directly to care facilities in emergency circumstances. This is likely because instead of admitting adults to a care facility in an emergency in accordance with s. 24(2)

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[94] *A.H. v. Fraser Health Authority.*
[95] AGA, s. 57(4)(b).
[96] *N.C. v. Fraser Health Authority*, 2024 BCSC 240 (CanLII) para. 188, https://canlii.ca/t/k6t69.
[97] *N.C. v. Fraser Health Authority*, paras. 180, 184, 196, 206, 217, 220.

of the HCCCFAA, designated agencies are generally admitting adults to an acute care without consent, where s. 24(2) of the HCCCFAA doesn't apply. Adults are then generally transferred to a care facility and admitted with substitute consent when a bed becomes available. One designated agency representative described the usefulness of the ability to admit adults into long term care with substitute consent after s. 24 of the HCCCFAA was brought into force. She said:

> ***"The other thing I think that changed for us with the Health Care (Consent) and Care Facility (Admission) Act is having a legal framework for assessing and supporting adults who aren't capable to transfer to long term care. This has been a very sort of useful tool and structure to support a lot of this work. I think in a lot of our situations you'll see the outcome might be a transfer to long term care. For an adult who can't make that decision — we've turned to substitutes for that concept."*** [98]

Mental Health Act detention

Many people who are subject to measures under the AGA are subsequently certified and detained pursuant to s. 22 of the *Mental Health Act* and some are placed on extended leave under s. 37 of the MHA.[99] Any person detained under the MHA can request a review by the Mental Health Review Board and can access legal advice and/or representation through the Community Legal Assistance Society after they have requested a review.[100]

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[98] BCOHRC interview with PHCS, October 31, 2024.

[99] The *Mental Health Act*, RSBC 1996, c. 288, https://canlii.ca/t/5643r provides authority, criteria and procedures for involuntary admission to a psychiatric facility. Under s. 22 of the *Mental Health Act* a person can be certified if a doctor has examined them and believes that they have a mental disorder; that they require psychiatrist treatment in a designated facility; that they require care, supervision and to control to prevent substantial medical or physical deterioration or for the protection of themselves or others and that they can not be admitted voluntarily. Under s. 37 of the *Mental Health Act,* a patient who is certified under s. 22 can be placed on extended leave in the community. When patients are certified under s. 22 it means that they have been admitted involuntarily to a designated facility based on a medical certificate. The patient can not leave the facility without permission and is deemed to consent to treatment. Unlike the AGA, the *Mental Health Act* therefore expressly authorizes detention, and provides for oversight and some safeguards.

[100] Community Legal Assistance Society, "Mental Health and Review Board Hearings", https://clasbc.net/get-legal-help/mental-health-law/mental-health-review-board-hearings/.

Case Study: A.H. v. Fraser Health Authority

A.H. is a middle-aged Indigenous woman who lived her whole life with her family, friends and community on the lands of her Nation. Until her detention by Fraser Health Authority in October 2016, she lived at her mother's house with her mother and other members of her family. She has two children who were not in her care at the time of her detention. A.H. lives with Fetal Alcohol Spectrum Disorder (FASD), cognitive impairments and mental health issues and has a history of experiencing abuse.

FHA received reports that A.H. was being abused and neglected by her mother and others. They prepared an initial support and assistance plan to which both A.H. and her mother consented. Under the plan, A.H. agreed to live with her mother with significant supports. Two years later, FHA again received reports that A.H. was being physically and sexually abused, exploited and neglected. FHA determined that the support and assistance plan was no longer adequate and developed a plan to apprehend A.H. and detain her in the hospital. On October 6, 2016, after formulating a plan with FHA staff, service providers for the Nation took A.H to the mall to go shopping and then took her to the hospital where she was detained under the AGA.

A.H. was detained in hospital as a "social admission" to keep her safe while FHA was seeking an FASD assessment and a determination of eligibility for CLBC services.

A.H. did not want to be detained. She ran away three times and, each time, was returned to hospital by police against her will. In this time, the police told FHA they did not have authority to apprehend and detain A.H. against her will and advised that certification of A.H. under the *Mental Health Act* would provide that authority. Certificates under the MHA were issued twice despite a lack of evidence that she was certifiable under that legislation. After she ran away for the third time, FHA detained A.H. in a secure ward for nearly another eight months.

While detained in Fraser Health Authority facilities, A.H. was not permitted to leave, was physically restrained, was offered medications she did not want and sometimes pressured to take them, was not allowed outside and was restricted from using the phone or the internet or having visitors. On at least one occasion, she was physically restrained to the bed and at other times was told she would be restrained if she did not agree to stay in the hospital. A.H was subject to a "Do Not Acknowledge" protocol meaning that if anyone called or attended the hospital, the staff were instructed to say she was not there. She was frequently observed telling staff that she felt like she was in jail.

A.H was not provided with reasons explaining why she had to stay in the hospital other than that staff believed she was being abused. When she told staff she wanted to challenge her detention she was "redirected" or told there was no way to challenge it. FHA staff refused to help her contact a lawyer, despite her many requests.

In October 2016, an assessment determined that A.H was incapable of accepting or declining support, that she didn't understand why services were being offered and could not link the offer of support to concerns about her safety.

In June 2017, A.H. was transferred to an adult acute mental health facility where she was finally provided with the phone number for the Community Legal Assistance Society. On August 2, 2017, counsel for A.H. filed a petition for *habeas corpus* in the Supreme Court of British Columbia. The health authority then filed an application seeking a support and assistance order for A.H on August 23, 2017, which was granted on September 22, 2017. By that time, Fraser Health Authority had detained A.H. for 11 months and 13 days as an "emergency measure" under s. 59(2)(e) of the *Adult Guardianship Act.*

In 2019, the Supreme Court of British Columbia released its judgment on A.H.'s application, finding that Fraser Health's detention of A.H. was unlawful. The Court found FHA's decision to detain A.H. without promptly applying for a support and assistance order, without providing her with clear and written reasons, without giving her the opportunity to obtain legal advice and under conditions that violated her residual liberty was "inexplicable." With respect to A.H.'s Charter rights, the Court found that FHA violated A.H.'s rights under sections 7, 9, 10(a), (b) and (c) of the Charter.[101]

[101] *A.H. v. Fraser Health Authority,* paras. 181-185.

Length of detention under the law

Two key issues that remain unclear (even after *A.H. v. Fraser Health Authority*) are whether s. 59 authorizes the designated agencies to impose detention—that is, physical or psychological restraint—on an emergency basis at all and, if so, for how long. The following outlines what we know and what we don't know about these two questions.

What we know

- **Section 59(2)(e) of the AGA does not provide designated agencies with authority to detain adults on an indefinite or long-term basis, or any longer than is required for emergency assistance during a genuine emergency, or any longer than is required for a prompt application for a court order**. In *A.H.*, the B.C. Supreme Court found there was no authority to detain for indefinite periods and no authority to detain in the absence of a pending application to Provincial Court. Where a detention exceeds the time required to respond to an emergency, especially for a lengthy period of time, the Court in *A.H.* found it to be a "flagrant overstepping" of the authority granted by the AGA.[102] In determining the scope of the emergency assistance provisions of the AGA, the B.C. Supreme Court has said:

  > In summary, an involuntary detention for a period longer than is reasonably required to apply for a s. 56 support and assistance order is not an "emergency measure" as those words are used in s. 59(2)(e). This conclusion reflects the ordinary meaning of the words used in s. 59(2)(e) read in context and harmoniously with the AGA's purpose of prioritizing self-determination and autonomy for adults with disabilities and imposing involuntary measures only as a last resort, in a manner as minimally intrusive as possible, and by court order.[103]

- **Section 59 does not explicitly authorize detention, nor does it impose any time limit for how long an emergency detention can last.** In fact, unlike most (if not all) statutes that authorize detention, s. 59 doesn't include the words detain, detention or involuntary admission and doesn't include criteria to detain, time limits or review mechanisms.

  When the legislation was first debated, some Members of the Legislative Assembly raised concerns about the vague wording of s. 59 and the potential for misuse of what appeared to be the "sweeping powers" it grants.[104] Then Attorney General, the Honourable Colin Gabelmann, responded by explaining that the emergency provisions in s. 59 were only intended to be used in a "real emergency" (such as "where an adult's life is in imminent danger" and "a situation where there is no time to do anything other than act within minutes") until the court could make a determination, which suggests that s. 59 was not intended to authorize long term detentions.[105]

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[102] *A.H. v. Fraser Health Authority,* para. 127.
[103] *A.H. v. Fraser Health Authority,* paras. 99, 125-127.
[104] British Columbia, Official Report of Debates of the Legislative Assembly (Hansard), 35th Parl, 2nd Sess, Vol 12, No 7 (15 July 1993) at 8758–8759, see especially at 8358 (J. Tyabji)
[105] British Columbia, Official Report of Debates of the Legislative Assembly (Hansard), 35th Parl, 2nd Sess, Vol 12, No 7 (15 July 1993) at 8759 (Hon. C. Gabelmann)

- **In so far as section 59(2)(a) allows for detention at all, it does not authorize detention beyond entering a premises and using reasonable force that may be necessary in the circumstances.** Section 59(2)(a) authorizes a designated agency to enter a premises where the adult is located and to use any reasonable force that may be necessary. This may amount to a physical or psychological detention if the adult feels they are not free to leave the premises. Section 59(2)(a) also does not confer authority on the police.
- **Section 59(2)(b) only authorizes a designated agency to convey or transport an adult to a safe place. It does not authorize the designated agency to take steps beyond that**. In other words, s. 59(2)(b) on its own does not authorize keeping an adult in a safe place after they are conveyed there. Section 59(2)(b) also does not confer authority on the police.
- Similarly**, it appears that section 59(2)(c) allows for minimal detention for emergency health care** and is discussed in further detail on page 49.
- **Adults who receive emergency assistance under section 59 of the AGA can be detained in a care facility for 72 hours without consent** under s. 24(1) of the *Health Care (Consent) and Care Facility (Admission) Act*. Since November 4, 2019, when Part 3 of the HCCCFAA was passed into law, a person who is subject to an emergency measure under s. 59 of the AGA can be admitted to a care facility without consent for 72 hours.[106] This applies only to admission to care facilities[107] and does not include admissions to acute care (such as hospitals), registered assisted living residences, CLBC homes, child/youth residential homes or designated facilities under MHA.
- **Section 59(2)(d) does not authorize detention**. It authorizes a designated agency to inform the Public Guardian and Trustee that the adult's financial affairs need immediate protection.
- **The AGA does not include a "certificate of emergency assistance" nor does the AGA authorize a five-day detention when a certificate is issued.** Some designated agencies have developed a Certificate of Emergency Assistance, which is valid for five days. There is no authority in the AGA for this practice.

[106] HCCCFAA, s. 24(1)(b).
[107] The definition of "care facility" includes: all residential care facilities for adults licensed under the CCALA including publicly subsidized and not subsidized facilities and licensed mental health and substance use facilities; private hospitals, extended care hospitals and rehab hospitals regulated under the *Hospital Act,* RSBC 1996, c. 200, https://canlii.ca/t/5650m. There is only one rehab hospital in B.C. regulated under the *Hospital Act*, which is the G.F. Strong Centre.

What we don't know

- **We don't know whether, in an emergency, the AGA authorizes a brief period of detention under section 59(2)(e).** In *A.H.,* the B.C. Supreme Court declined to decide whether s. 59(2)(e) of the AGA might authorize a "brief, temporary period of detention pending a prompt application to Provincial Court, provided the conditions in s. 59(1) continue to be met"[108] (because the facts in that case far exceeded any reasonable definition of a brief detention).
- **If an adult is detained under section 59, we don't know exactly how long a designated agency has to apply to court to obtain an order authorizing detention.** This is because the AGA does not specify a timeframe. In other jurisdictions, where removal of an adult from a situation of abuse or neglect is permitted, a court order is required to be obtained within two to five days of the removal.[109]
- **It is unclear why section 59(2)(c) is necessary** if it was intended to provide authority to detain adults in hospital for emergency health care given the more comprehensive scheme outlined s. 12(1) of the *Health Care (Consent) and Care Facility (Admission) Act.*

Government attempts to address critique of adult detention under the AGA

The *A.H.* case was a significant legal milestone in the interpretation of how vulnerable adults are to be treated under the AGA. However, the designated agencies that were interviewed for this Inquiry told the Commissioner that they did not receive any guidance from the provincial government until nearly a year after the B.C. Supreme Court's decision was released.

In November 2019 the Community Legal Assistance Society wrote to the Ministry of Attorney General to ask for them to act on potential rights violations associated with s. 59 and asked for a meeting to discuss. That meeting took place in December 2019. On January 22, 2020, two representatives from the Ministry of Health attended a meeting of the Adult Guardianship Act Provincial Advisory Committee (AGA PAC) to provide direction on the use of s. 59 of the AGA. The Commissioner learned that subsequent to the AGA PAC meeting, VCHA and FHA wrote to the government to provide input and to seek further guidance. It is unclear whether further guidance was provided. During interviews, the Commissioner heard that no one from the government has followed up with the designated agencies since providing the direction noted above.[110]

In early 2021, recognizing that concerns and criticisms regarding the province's adult protection frameworks had been building, a working group of the Ministry of Attorney General, Ministry of Health and the Public Guardian and Trustee was established to conduct a comprehensive review of the province's adult abuse and neglect response framework. The working group first engaged with individuals from the designated agencies responsible for responding to suspected abuse and neglect of adults to identify priority issues. The working group then engaged more broadly with

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[108] *A.H. v. Fraser Health Authority,* paras. 99, 125.
[109] Health Justice, *Unpacking Assumptions: What Research Tells Us About Our Approach to the Adult Guardianship Act*, April 2024, 51. https://www.healthjustice.ca/adult-guardianship-act.
[110] BCOHRC interviews with FHA, October 30, 2024; VCHA, November 1, 2024.

other partners, organizations and stakeholders. Extensive issues and concerns were raised during these consultations.[111]

The government heard significant concerns related to the adult abuse and neglect framework, including Part 3 of the AGA. Included were concerns about adults being detained for lengthy periods of time without court oversight or other procedural safeguards. Despite this, government has not proposed any legislative changes or made any other significant policy changes to protect the rights of vulnerable adults who experience investigations and responses pursuant to Part 3 of the AGA since the court's 2019 decision in *A.H.* and since the working group began its review in early 2021. The Commissioner reviewed documents that suggested that government recognized the importance of this project and of timely and significant action, and was aware of concerns about continuing risk of harm to vulnerable adults.[112] However, due to concerns about resources available for this project, the complexities of the issues and the need for further consultation and engagement with multiple public bodies, other partners and stakeholders, government's view was that additional time and resources would be required to implement solutions.[113]

In May 2023, the Commissioner was informed that the working group had been focusing on non-legislative options, that it would be undertaking further engagements and that an intentions paper was anticipated shortly.[114] At the time of the publication of this report, the government had not yet released its intentions paper or conducted further engagements.

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[111] Records obtained in response to information requests sent to the Ministry of Attorney General and the Ministry of Health.
[112] Records obtained in response to information requests sent to the Ministry of Attorney General and the Ministry of Health.
[113] Records obtained in response to information requests sent to the Ministry of Attorney General and the Ministry of Health.
[114] Emails from AG working group representative to BCOHRC, May 2023.

Analysis

Finding 1: Detentions under s. 59(2) of the AGA impact a significant number of adults

The Commissioner asked designated agencies to identify the total number of s. 59 detentions and total number of individuals detained between January 2018 and September 2023. According to the data received, there were **340 reported detentions** of **300 detained individuals** in B.C. between January 2018 and September 2023 (5.75 year span). Reliance on s. 59 is relatively rare in the context of the total number of abuse, neglect and self-neglect investigations conducted by designated agencies (less than five per cent), and staff efforts to find community-based supports for adults is admirable and important. However, it is still fair to say that designated agencies regularly use s. 59 of the AGA to detain adults given the number of detentions that occurred over the time span researched.

For clarity, the Commissioner considers that all adults being held against their will for emergency assistance under s. 59(2) are being detained as that term is defined under international and domestic law, and therefore their situations invoke the protections of human rights law. This does not mean that the detentions are necessarily arbitrary under the law, but rather that the law of detention (and the human rights protections contained in that law) applies.

Number of detentions and detained individuals

The number of detentions and detained individuals was highest in Fraser Health Authority (174 detentions and 146 detained individuals), followed by Vancouver Coastal Health Authority (68 detentions and individuals) and Interior Health Authority (39 detentions and 37 individuals) (issues about the undercounting of the number of people detained can be found below).

Table 2 below shows the number of detentions by year broken down by designated agency.

Table 2: Number of detentions in B.C. by year and by designated agency*

YEAR	TOTAL	VCHA	PHC	FHA	IHA	VIHA	CLBC	NHA
2018–2023	**340**	**68**	**28**	**174**	**39**	**5**	**26**	**0**
2018	56	6	8	39	2	0	1	0
2019	46	9	0	33	3	0	1	0
2020	56	8	2	34	6	0	6	0
2021	56	13	4	22	8	0	9	0
2022	77	17	8	32	13	2	5	0
2023*	49	15	6	14	7	3	4	0

*2023 data is incomplete. At the time of the Commissioner's order, data was only available from January to September 2023.

Comparing per-year detentions before the B.C. Supreme Court's *A.H. v Fraser Health Authority* decision (2018–2019) and after (2020–2023), the provincial average per-year detentions increased from 51 detentions per year during 2018 to 2019 to 59.5 detentions per year during 2020 to 2023. However, the trends were different across designated agencies with the average per-year detentions decreasing in FHA, the health authority that detained A.H. (from 36 to 25.5), but increasing in the rest of the designated agencies.

Among the 272 reportedly detained individuals in PHC, FHA, IHA, VIHA and CLBC, 26 individuals (9.6 per cent) were reported to have been detained under the AGA more than one time.

Table 3: Population and number and rate of detentions and detained individuals in B.C., 2018 to 2023, by designated agency***

	POPULATION SERVED*	DETENTIONS		INDIVIDUALS	
		NUMBER	PER 100K POP	NUMBER	PER 100K POP
TOTAL	**4,290,994**	**340**	**7.9**	**300**	**7.0**
BY DESIGNATED AGENCIES					
CLBC**		26		18	
FHA	1,585,726	174	11.0	146	9.2
IHA	686,724	39	5.7	37	5.4
VIHA	725,959	5	0.7	4	0.6
PHC	602,711	28	4.6	27	4.5
VCHA	1,058,535	68	6.4	68	6.4
NHA	234,050	0	0	0	0

* The 2021 population aged 19 years or older in B.C. or in each of the health authority boundaries or serving area (only the City of Vancouver for PHC)

** CLBC is not included in the per capita data because they do not provide services to a defined geographic area

*** 2023 data is incomplete. At the time of the Commissioner's order, data was only available from January to September 2023

Between 2018 and 2023, the rate of detained individuals in B.C. was seven people per 100,000 population. The table above shows the number and the prevalence (per 100,000 population) of detentions and detained individuals across the regional health authorities. The highest rate of detentions per 100,000 was in Fraser Health Authority (11.0) followed by Vancouver Coastal Health Authority (6.4) and then Interior Health Authority (5.7). Similarly, the highest rate of detained individuals was in Fraser Health Authority (9.2), followed by Vancouver Coastal Health Authority (6.4) and Interior Health Authority (5.4). For clarity, the difference between the rates of detention and the rates of detained individuals accounts for the number of adults detained more than once.

Detailed analyses of the data by designated agency can be found in the Appendix.

Authority relied on to detain

The Commissioner asked the designated agencies to specify the subsections of s. 59(2) they relied on for every instance when an adult was detained under s. 59(2).

The most commonly reported subsection used was s. 59(2)(e) which permits designated agencies to take "other emergency measures" (67.6 per cent, 230 detentions). The least commonly reported subsection was 59(2)(d) (5.3 per cent, 18 detentions) which permits designated agencies to inform the Public Guardian and Trustee that an adult's financial affairs need immediate protection.

Designated agencies rarely rely on one subsection of s. 59(2) on its own. Subsections are almost always relied on in combination with other subsections. Between 2018 and 2023, s. 59(2)(a), permitting entry into premises and use of reasonable force, was never used on its own; s. 59(2)(d), permitting a designated agency to notify the Public Guardian and Trustee that an adult's finances need immediate protection, was used on its own only one time; s. 59(2)(b), permitting removal from a premises and transportation to a safe place, was used on its own five times; s. 59(2)(c), permitting emergency health care, was used on its own 23 times out of 340 times (in about seven per cent of detentions) and s. 59(2)(e), permitting the designated agency to take any other emergency measure necessary, was used on its own 87 times out of 340 (in about 25 per cent of detentions).

Designated agencies commonly relied on the following subsections together:

- Sections 59(2)(c) and (e) were used together in 121 out of 340 — just over one third (35.7 per cent) of the detentions.[115]
- Sections 59(2)(b) was used with (c) in 83 out of 340 detentions — about a quarter (24.5 per cent) of the detentions.[116]
- Every time s. 59(2)(a) was used, it was used in combination with s. 59(2)(b), which occurred in 64 detentions (18 per cent of all detentions). Among those 64 detentions, s. 59(2)(e) was also used in 82.8 per cent (53 out of 64) of detentions. Sections 59(2)(a) and (b) were used together without other subsections four times.

As discussed above, ss. 59(2)(a) and (b) only authorize detention to enter a premises, use reasonable force and transport an adult to a safe place. In the Commissioner's view, any detentions that relied solely on ss. 59(2)(a) and/or (b) that are longer than a matter of hours — and especially any detentions that rely solely under these subsections for longer than one day — belie the plain language interpretation of the authority provided by those subsections. For example, in one case a designated agency detained an adult under section s. 59(2)(b) alone for more than 90 days, which is difficult to justify as an emergency measure.

[115] It is important to note that these combinations may include other AGA s. 59 subsections.
[116] It is important to note that these combinations may include other AGA s. 59 subsections.

During interviews with designated agency representatives, the Commissioner asked how they use the subsections of 59(2) in their agencies. The Commissioner learned that designated agencies' understanding and practices vary. For example:

- 59(2)(a) – sometimes designated agencies ask the police to attend with them when they are accessing an adult to "keep the peace" despite police not having authority to act under the AGA.[117]

- 59(2)(b) – all designated agencies representatives noted that they are limited in their options for safe places to convey adults to, resulting in almost every adult who is detained under s. 59 being detained in hospital.[118] Designated agencies might transport adults by ambulance, taxi, by staff who are authorized to do so, with the help of a support person or, at times, by police. Most designated agency representatives said that they are not aware of police using force,[119] like handcuffs, when transporting adults, although other representatives reported having knowledge of police using force in these circumstances.[120] The representatives also confirmed that they are not clear what authority the police rely on to transport adults to hospital.[121]

- 59(2)(c) – designated agencies provided a range of interpretations of this subsection. For example, when asked about s. 59(2)(c) Interior Health Authority told the Commissioner that it considers that this section may be relied on to provide emergency health care without consent if the criteria in section 59(1) are met.[122] Nonetheless, Interior Health Authority and other designated agencies noted that rather than relying on s. 59(2)(c), where possible, they would generally first rely on substitute decision-makers or the HCCCFAA to obtain consent to health care. For example, Providence Health Care told us, "Our practice is not to use section 59(2)(c) to provide emergency health care. We see it as least intrusive to be using healthcare consent to provide healthcare. So we would be going to, in an emergency, section 12 [of the HCCCFAA] and at the same time trying to find a substitute decision maker, and if there is none going to the Public Trustee for healthcare consent."[123]

- 59(2)(e) – is most commonly understood as the authority to hold or detain adults. Depending on the circumstances, adults might experience further restrictions on their liberty like being placed in a secure unit, visitor restrictions or do not acknowledge protocols.

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[117] BCOHRC interviews with VIHA, September 26, 2024; CLBC, October 3, 2024; PHCS, October 31, 2024; IHA, November 1, 2024; VCHA, November 1, 2024; FHA, October 30, 2024. Although there may be common law authority that may apply, the application of this authority under the AGA to this context is unclear.
[118] BCOHRC interviews with VIHA, September 26, 2024; CLBC, October 3, 2024; NHA, October 3, 2024; PHCS, October 31, 2024; IHA, November 1, 2024; VCHA, November 1, 2024; FHA, October 30, 2024
[119] BCOHRC interviews with VIHA, September 26, 2024; CLBC, October 3, 2024;
[120] BCOHRC interviews with FHA, October 30, 2024, and subsequent clarification, November 1, 2024; IHA, November 1, 2024
[121] BCOHRC interviews with VIHA, September 26, 2024; CLBC, October 3, 2024.
[122] BCOHRC interview with IHA, November 1, 2024
[123] BCOHRC interview with PHCS, October 31, 2024.

The Commissioner is concerned about the inconsistent responses provided in interviews. In particular, the Commissioner is concerned about how section 59(2)(c) is used and about the lack of clarity on whether section 59(2)(c) authorizes designated agencies to provide health care without the consent of the adult or their personal guardian or representative.

In community engagements for this Inquiry, the Commissioner also heard concerns about the use of "unrestricted, undefined and unreviewable restraints"[124] on detainees including physical and chemical restraints. Community organizations question whether restraints are disproportionally experienced by individuals from marginalized communities.

Lengths of detention

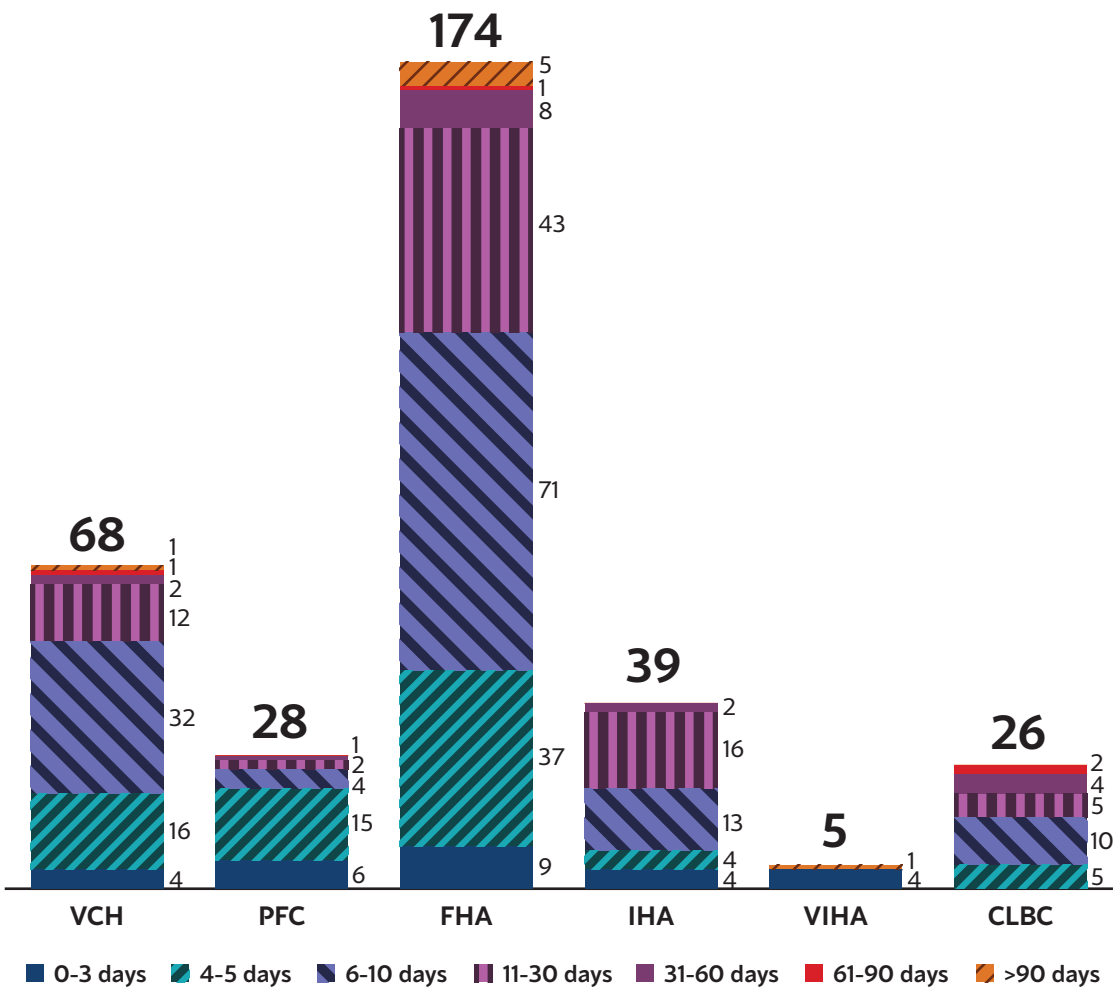
The Commissioner asked the designated agencies to identify the number of days each adult was detained, as an emergency measure, under section 59(2) of the Act between 2018 and 2023. The Commissioner learned that designated agencies use different approaches to counting the number of days that adults are detained with some designated agencies not counting the first day the adult was detained. Data needed to be resubmitted to the Commissioner after this discrepancy was discovered; the length of detentions are now consistently calculated in this report across designated agencies.

- The median length of detentions was six days, while the maximum was 212 days.
- Most of the detentions (92.1 per cent, 313 detentions) were reported to be more than three days.
- Almost seven in 10 of the detentions (69.4per cent, 236 detentions) were reported to be more than five days.
- More than three in 10 of the detentions (31.2 per cent, 106 detentions) were reported to be more than 10 days.
- 8.2 per cent (28 detentions) were reported to be more than 30 days.
- 3.2 per cent (11 detentions) were reported to be more than 60 days.
- 2.1 per cent (seven detentions) were reported to be more than 90 days.

[124] Comment from Health Justice at BCOHRC community engagement, February 8, 2024.

The length of detentions varied across designated agencies.

Number of detentions by duration, by designated agency, B.C., 2018 to 2023



- Detentions in Providence Health Care tended to be shorter relative to the provincial average (for example, for detentions lasting more than five days—25.0 per cent vs. 69.4 per cent).
- The reported averaged lengths of detentions before (2018–2019) and after (2020–2023) the *A.H* decision was released and s. 24 of the HCCCFAA came into force were not much different.
  - The percentage of detentions lasting more than five days slightly decreased from 73.5 per cent during 2018 to 2019 to 67.6 per cent during 2020 to 2023.
  - However, the percentage of detentions lasting more than 30 days (from 7.8 per cent to 8.4 per cent) and 60 days (2.0 per cent to 3.8 per cent) slightly increased.

The Commissioner did an analysis of the 28 detentions that were longer than 30 days and notes the following:

- The Commissioner expected that, after the court's decision in *A.H*, there would be at least a reduction in lengthy detentions without a court order. However, without suggesting that detentions under 30 days are acceptable, more than two thirds (71.4 per cent or 20 of 28 detentions) of detentions that were over 30 days occurred after the court's decision in *A.H.* (after 2020).
- 50.0 per cent (14 of 28) of the detentions over 30 days occurred in FHA; 21.4 per cent (six of 28) by CLBC; 14.3 per cent (four of 28) in VCHA, 7.1 per cent (two in 28) in IHA and 3.6 per cent (one in 28) in VIHA and PHC.
- In only 4 of the detentions over 30 days is there a reference in the data provided to the Commissioner to a court order being pursued (those detentions were for 74, 76, 48 and 95 days).
- 78.6 per cent (22 of 28) adults who were detained for over 30 days were detained in hospital, three adults were detained in CLBC staffed resources, two in "other" locations and one adult was detained in a long term care facility.
- In 21.4 per cent of the detentions over 30 days (six of the 28 detentions) the designated agency has no record of providing rights notification to the adult (these detentions were for 105, 60, 53, 44, 40, and 35 days). In 31 per cent (nine of 29) of detentions over 30 days, rights notification was provided orally only (these detentions were for 111, 76, 74, 56, 46, 34, 32 and 31 days). In 52 per cent of detentions over 30 days, the adult did not receive written rights notification or written reasons.
- In 42.8 per cent (12 of 28) of detentions over 30 days, the designated agency has a record of providing both written and oral rights notification. In one detention (3.6 per cent) rights notification was provided in writing only.
- In 60.8 per cent of detentions over 30 days, the designated agency has a record of facilitating access to counsel or counsel being involved. However, it is unclear from the data when and how counsel became involved. For example, one file indicates that counsel for the patient contacted the designated agency within one month of the detention.
- There is no record of the designated agency facilitating access to counsel or counsel being involved in 32.1 per cent (nine of 28) detentions over 30 days (these adults were detained for 95, 85, 74, 60, 58, 54, 46, 40 and 34 days). There are an additional two detentions where this field was left blank.

Detentions were most likely to be longer than 30 days among those identified as having mental health or substance use issues (10.2 per cent, 21 out of 205 cases involving mental health or substance use) or those unhoused or living in shelters before detention (10.9 per cent, six out of 55 cases involving people who are unhoused or living in shelters).

Claire and Jimmy's story

The Commissioner interviewed family members of adults who were detained under the AGA as part of the Inquiry to ground the Inquiry in the experiences of those who have experienced loved ones being detained under the AGA. The Commissioner is extremely grateful to those individuals who took the time to share their stories and experiences with us. Their insights informed our thinking throughout the work of this Inquiry.

Rather than including the stories as they were shared, the Commissioner has made the difficult decision to change the facts of their stories into composites or hypotheticals. The Commissioner made this decision to protect the identity and personal information of all the people involved, including the detainees, and to ensure fairness given that we did not have the opportunity to fully investigate each case nor did the designated agencies have a fulsome opportunity to respond to them.

These composites are based on the experiences and perspectives of the family members who spoke with us. The quotes in the story are the family members' words.

Claire is the mother of Jimmy, who she describes as the light of her life. Jimmy is an adult with developmental or intellectual disabilities and severe physical disabilities. He needs assistance with all activities of daily living, 24 hours a day, seven days a week.

When Jimmy transitioned from youth services to become a CLBC client as an adult, Claire learned his support would be significantly reduced:

> "So we were involved and we had a life and we had friends and we could visit family. But when our supports were cut so dramatically that all fell by the wayside and we weren't going out, we weren't socializing. We had become very, very isolated."

Claire told CLBC staff about the impact the lack of supports was having on their life. The same day, there was a knock on the door.

> ***"An RCMP officer attended and a manager and staff from a group home and they said they were going to be removing him under the emergency provision of the Adult Guardianship Act and … I haven't been right since."***

Claire explained that she was told that they were doing an investigation and that it would take time. “We were given no information, no legal advice, no anything.” She said, “If they felt that there were concerns … there were a myriad of ways that they could have handled it. They found the most damaging way.”

Jimmy was detained in a group home. CLBC said that he was detained for approximately a year and a half after which Claire consented to him living there for another year. Claire said that she never provided consent and that he was detained for 2 and a half years. Jimmy required one-to-one care but at the group home there was one staff person for two people. Claire shared that Jimmy was walking with a walker when he was living at home but has never walked again since living in the group home. He lost 44 pounds. Eventually Claire was permitted to bring Jimmy home for three days a week. She described how difficult it was to take him back to the group home. After approximately two and half years of living in the group home Claire insisted on taking Jimmy home and CLBC released him back to Claire’s care who then made the decision to close the file and stop receiving services from them. “I had to distance ourselves from them. I was fearful of them. They operated above the law and they seem to have all the power they needed to do so…”

Claire explained the impact on her and her son:

> ***“It irreparably harmed us. It changed who we are…. And so I know we were victimized…. I know we were traumatized. I don’t understand the scope of that. I know I have a lot of triggers … it’s visceral. This is my son. He’s older now. However, he’s exceptionally vulnerable. And that puts a different quality to the relationship and the responsibility you feel and the protection…. I feel like I failed my son. And I did nothing wrong. I couldn’t protect him. And I know that’s not my fault … but it doesn’t ease the pain….They robbed us of our humanity. But we’re still here.”***

Claire explained, “And I’m not sure when, but I learned two very important words that are … branded on my soul—habeas corpus. Two words and I could have saved my son.”

Purpose of detentions

As noted above, designated agencies can provide emergency assistance without an adult's consent if they believe that the adult is "apparently abused or neglected" (among other criteria). Examples of abuse about which the designated agencies provided data included physical abuse, financial, emotional, sexual abuse and self-neglect. During the Commissioner's community engagements, the Commissioner heard:

> ***"in the case of someone who's being abused by someone else, we see this really backwards scenario where … essentially we're taking the person being abused and putting them in detention."***[125]

Some examples of neglect about which the designated agencies provided data included adults not receiving personal care or adequate nutrition, not receiving medical care, having medication withheld, living in unsafe conditions, living in unsanitary conditions and experiencing isolation or seclusion. Some examples of self-neglect about which the designated agencies provided data included inadequate personal hygiene, malnutrition, untreated illness, unsafe living conditions, unsanitary living conditions, isolation or seclusion and financial self-neglect.

Table 4: s. 59(1)(a) – adults who were apparently abused or neglected

REASON FOR AGA INTERVENTION	NUMBER OF TOTAL DETENTIONS*	PERCENT OF TOTAL DETENTIONS *
abuse	56	16.5%
neglect	82	24.1%
self-neglect	253	74.4%

*The numbers exceed the total number of detentions (340) because some adults were detained for more than one reason.

It is notable that about three quarters (74.4 per cent, 253 detentions) of detained individuals were detained for self-neglect, while less than a quarter were experiencing abuse (16.5 per cent, 56 detentions) or neglect (24.1 per cent, 82 detentions). By way of context, those who were detained due to self-neglect were more likely to have mental health or substance use issues (69.9 per cent vs 59.1 per cent). During community engagements the Commissioner heard that "what we're seeing is the AGA being used to intervene in peoples' choices for themselves, particularly around drug use or alcohol, sexuality, exploitation … we're concerned … about the use of the AGA in governing people's choices about themselves and their own bodies and own lives."[126]

[125] Comment from Community Legal Assistance Society at BCOHRC's community engagement, February 8, 2024.
[126] Comment from Health Justice at BCOHRC's community engagement, February 8, 2024.

The Commissioner asked the designated agencies for data related to the reason for their conclusion that the adult is apparently incapable of accepting or refusing support and assistance. By far the most common reason provided is dementia or cognitive impairment (67.4 per cent or 229 detentions); followed by mental illness (16.8 per cent or 57 detentions); frailty/injury due to advanced age (12.1 per cent or 41 detentions); acquired brain injury (11.8 per cent or 40 detentions); and alcohol or drug impairment (11.5 per cent or 39 detentions). One designated agency representative explained:

> ***"Over 80 per cent I think of the people that we used emergency interventions on had significant health and emergent medical needs dementia was, I think, the primary reason for incapability … or frailty—or both. These are very, very impaired people who our teams believe if they don't act in an emergent way are going to die."*** [127]

It is also notable that designated agency staff often perceive the available options for response to situations of apparent abuse and neglect as limited by the resources available to keep an adult in the community.[128] If resources to keep the adult in the community are limited or perceived as limited, this can contribute to prolonging detentions under the emergency assistance provisions, as it can lead to delays in putting together a support and assistance plan.

This was echoed in the Commissioner's community engagements. The representative from Inclusion BC shared that "one of the reasons why these detentions extend is because there's no social safety net to catch the person … when the person is taken most often to emergency … they are safe in terms of keeping them alive, and they are not in more danger. But then the problem happens when they need to be released from hospital and there's not enough support … there is a lack of capacity in the systems to respond to the person's needs and there are very complex circumstances where you have mental health, substance use and a developmental disability. These require a lot of support."[129]

During the interviews conducted for the Inquiry, the Commissioner heard that designated agency staff generally perceive the hospital to be the only safe place available to them in an emergency and beyond, and that adults are generally admitted to the emergency departments and then kept in hospital during the time needed to put a plan in place.[130] Some research nonetheless suggests that community-based interventions, as opposed to keeping adults in hospital, may be the most effective at addressing concerns about abuse and neglect and that these interventions need more study.[131]

Further, the 2015 Case for Change report indicated that "adults experience an increased length of stay in hospital if staff are not trained to respond in the most efficient and effective way possible."

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[127] BCOHRC interview with VCHA, November 1, 2024.
[128] BCOHRC interviews with VIHA, September 26, 2024; CLBC, October 3, 2024; NHA, October 3, 2024; PHC, October 31, 2024; IHA, November 1, 2024.
[129] Comment from Inclusion BC at BCOHRC's community engagement, October 31, 2024.
[130] BCOHRC interviews with VIHA, September 26, 2024; PHCS, October 31, 2024; IHA, November 1, 2024; VCHA, November 1, 2024; FHA, October 30, 2024.
[131] Health Justice, *Unpacking Assumptions*, 29-32.

Finding 2: Transparency and oversight over detention are lacking

Transparency of detention data lacking

> ***"One of the key things that I hope comes out of this Inquiry is that we do get data so we can understand what's happening and to who."***[132]

AGA detentions are characterized by a concerning lack of transparency. There is no requirement that the designated agencies publicly report on the number of annual detentions or their circumstances, and that reporting has not been done proactively. During the Commissioner's interviews with representatives from the designated agencies, they confirmed that they do not report publicly on their use of s. 59 of the AGA. The Commissioner has also not otherwise found any publicly available data on the use of s. 59 of AGA. Further, there are no provincial data collection standards for Part 3 of the AGA and there is not one body tasked with overseeing its implementation.

Notably, while designated agencies do report data on abuse and neglect investigations annually to the Office of Seniors Advocate, this does not include data on use of s. 59 of AGA.[133] The data provided to the Seniors Advocate is made public in the Advocate's annual Monitoring Seniors Services Report and supplementary data tables. The Seniors Advocate warns, however, that this data should be interpreted with caution because designated agencies only began collecting and reporting the data to the Advocate in 2018. The Seniors Advocate also notes that much of the data is not entered into reporting systems until a case is closed, creating a reporting delay.[134] The Senior's Advocate does not report any data on detentions under s. 59 of the AGA.

Through this Inquiry, the Commissioner obtained extensive data from the designated agencies related to emergency assistance under s. 59 of the AGA by ordering the agencies to produce records and information. In response to the Commissioner's order, designated agencies initially resisted disclosing information on the basis of the *Freedom of Information and Protection of Privacy Act*, even though that legislation explicitly provides exceptions for compliance with the Commissioner's order.[135] In addition, as explained by the designated agencies, there are significant limitations with the data provided, although it is notable that cumulatively, these limitations would likely lead to higher numbers of detentions or days in detention, not a reduction in the figures represented in this report.

Designated agencies collect and store information related to Part 3 of the AGA in client charts (physical, paper-based records), electronic management systems and the Re:Act Reporting System

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[132] Comment from Community Legal Assistance Society at BCOHRC's community engagement, February 8, 2024.
[133] BCOHRC interviews with VIHA, September 26, 2024; CLBC, October 3, 2024; PHCS, October 31, 2024; IHA, November 1, 2024; VCHA, November 1, 2024; FHA, October 30, 2024.
[134] Office of the Seniors Advocate, *Monitoring Seniors Services 2024 Report, and Supplemental Data Tables*, https://www.seniorsadvocatebc.ca/monitoring-seniors-services/.
[135] *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, s. 33(1)(l).

(RRS), where it is used.[136] Re:Act is part of the Patient Safety Learning System administered by the Provincial Health Services Authority. It is a health database that CLBC does not have access to. Because reporting into Re:Act is not mandated provincially, it is used by some health authorities and not others. FHA and NHA don't use Re:Act. VIHA has used limited fields in Re:Act since 2014 but stopped requiring staff to enter data into it with the introduction of their electronic database, Cerner, in March 2022. VCHA and PHC have used Re:Act since 2011 on an optional basis. In 2019 staff in VCHA were directed to ensure all reports of suspected abuse and neglect of vulnerable adults were entered into RRS for tracking purposes.

Individuals may have multiple physical files depending on where they receive services (for example, home health, community mental health and substance use, acute care, long term care). Even within a single designated agency, records related to Part 3 of the AGA may be stored in multiple electronic management systems. Given the number of physical files and electronic management systems that needed to be searched to provide the Commissioner with reliable data, the data is likely underreported due to files not being located by searches conducted, lags in data entry, staff not complying with directions to record data in electronic databases, limitations in database search capacity and delays in health authority sites adopting electronic databases. For example:

- FHA told the Commissioner that it developed AGA specific templates for its electronic databases in 2018 which improved its ability to extract data after 2018. However, FHA said that the search functionality in its three electronic databases is limited which resulted in challenges extracting the requested data. FHA also told the Commissioner that search limitations in its Meditech system impacted the search for records for almost all of 2018. Further FHA explained that while staff are instructed to record the data, "in some instances staff may not have complied … leaving some gaps in available data."[137]
- VCHA noted that data was pulled from the Re:Act system and that since August 2019 they have "greater confidence that all uses of s. 59 have been captured." However, VCHA told the Commissioner that a potential gap was identified that related to 125 investigations that were not entered into Re:Act in 2021 for a particular site. After discovering the gap, additional searches were conducted.[138]
- VIHA told the Commissioner that they searched their electronic database, Re:Act and their AGA Office consult tracker to identify records. VIHA told the Commissioner that there are significant limitations with its Re:Act data because it is a voluntary system and is not consistently used by staff. Further, VIHA's electronic database, Cerner, was also reviewed but it was only launched in a limited way in March 2022 and is being implemented in phases. Cerner data was only available from March 2022 to December 2023 and does not include North Island acute care sites, West Coast General Hospital and three long term care sites. VIHA reported that the electronic database is enhancing its ability for monitoring use of s. 59.

[136] The Re:Act Reporting System was developed in 2009 with a grant from the Solicitor General; piloted in 2010; launched for optional use in 2011 and revised and redesigned in 2016. Re:Act is part of the Patient Safety Learning System (PSLS) administered by the Provincial Health Services Authority. The RRS forms were changed in April 2021 to simplify the process and workflow and to provide more clarity and less duplication on data fields.
[137] FHA letter to the Commissioner, February 28, 2024.
[138] VCHA letter to the Commissioner March 14, 2024.

- NHA reported to the Commissioner that they did not use s. 59 of the AGA to detain any adults between 2018 and 2023 and further that they have never employed the emergency assistance provisions of the AGA. However, in an interview with the NHA's representative, the Commissioner learned that NHA did not conduct a search of any of its electronic or paper-based files in response to the Commissioner's order. Rather the representative told the Commissioner that NHA response is "anecdotal" and that they "just knew." They explained, "I have been in that position that entire timeframe. So it's not like I had to ask anyone else. Because the expectation based on our policy that any use of Section 59 under the AGA would have to come through my office, I knew that it was not something that had ever been used." However, NHA's representative also confirmed that their policy does not require staff in the North to consult with their team lead, manager or adults abuse specialist if they are using or planning on using s. 59 of the AGA, although there is an expectation that they do so. Given this, it is possible that the data provided by NHA is underreported. While the Commissioner recognizes the unique context of service delivery in the North, NHA failed to demonstrate that it conducted a reasonable search for records in response to the Commissioner's order, leaving open the possibility that the data provided to the Commissioner is underreported. For example, NHA did not take the step of asking any of its sites or program areas if they used s. 59 between 2018 and September 2023.

In addition to the above reasons for possible underreporting, other reporting limitations include the use "doctor's orders" in lieu of AGA authorizations. During the Inquiry, the Commissioner heard from community organizations and reviewed records that suggested that, in some designated agencies, there is a practice of adults being kept in hospital under "doctor's orders" rather than on the basis of any statutory authority authorizing detention, including the AGA. In an interview with Commissioner staff, the representative from the NHA was asked if they are aware any instances where an adult was kept in hospital under doctor's orders. They confirmed that "it's happened" while also clarifying that this is not something they endorse and that they are not aware of it being a "practice" in NHA. Reliance on doctor's orders to detain is addressed in Finding 4. Reliance on doctor's orders to keep adults in hospital means that true number of instances where adults who would otherwise be reported as detained under the AGA are likely underreported.

Finally, while reviewing the Commissioner's draft report during the administrative fairness review process, many designated agencies discovered errors in the data they had already provided to the Commissioner raising additional concerns about the overall reliability of the data collected and pointing to the need for provincial data standards.

In sum, given the limitations described above, and considering that every designated agency collects data differently, that there are no provincial standards or requirements on how to collect data and that the government has not created a province-wide data management system for the AGA, the data in this report, though the most comprehensive data collected on use of s. 59 of the AGA to date, is likely under reported.

Further, aside from the information reported by the Seniors Advocate, the Commissioner finds a lack of public transparency and publicly available information on how Part 3 of the AGA is administered, which significantly undermines the potential for oversight. As noted by Health Justice,

> ***"Such a significant exercise of power and responsibilities should be subject to regular and independent oversight and accountability. This is even more important when the adults who are intended to benefit from AGA, Part 3 are vulnerable not just to concerns about abuse, neglect, or self-neglect, but also to potential overuse, underuse, or misuse of duties and powers by designated agencies. The most effective way for government to enhance oversight and accountability and to inform the public would be to establish ongoing, independent oversight and accountability mechanisms to monitor how designated agencies have been and are exercising their duties and powers under AGA, Part 3."***[139]

Government itself has also recognized that there is a need for better and consistently recorded data related to s. 59 of the AGA.[140]

Importantly, for the purposes of oversight, publicly reported de-identified aggregate data is essential for adequate oversight and does not violate privacy laws because the reporting of such information does not entail the disclosure of any personal information or personal identity information within the meaning of privacy legislation.[141]

Transparency of individual detentions lacking

Designated agencies actively take steps to reduce the information available to the public by not disclosing aggregate data public (as discussed above) and by limiting disclosure of information about individual cases. While privacy protections are important here (especially where the adult is being "apparently abused" by the very person seeking information about the detention), that doesn't mean that there cannot be oversight of their detention and information and assistance provided to the adult, their representative or other loved ones and their lawyer as to how to challenge the detention; in fact, the opposite is true. Privacy considerations bolster the need for transparency to an oversight body and to those on whom the adult may rely on to assist in challenging their detention.

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[139] Health Justice, *Unpacking* Assumptions, 43.
[140] Records obtained in response to information requests sent to the Ministry of Attorney General and the Ministry of Health.
[141] *Freedom of Information and Protection of Privacy Act*, Schedule 1, definitions of "personal information" and "personal identity information".

However, VCHA and FHA have explicit policies refusing to acknowledge the existence of an AGA investigation, potentially including when an adult is detained. VCHA policy, for example, indicates that when conducting an investigation into abuse and neglect "[t]he investigation must be documented in the health record, using the heading **Investigation under the Adult Guardianship Act. Confidential. Do not disclose or release.**"[142] CLBC policy advises staff that "legal requirements under relevant privacy legislation apply when considering release of any information" without stating what those requirements are or the exceptions to them,[143] for example that a person's legal representative should be entitled to the same information as that person.[144] (Mentioned in section below on page 65.)

When in court, it appears that sometimes designated agencies and adults apply for publication bans and sealing orders, to protect the adult's privacy given the sensitive personal information contained in their records. The Provincial Court of British Columbia has created rules for proceedings in that court that restrict access to AGA files to the party and the lawyer in the same way that access is restricted to family files.[145] Others seeking access to AGA files require judicial authorization. While the rules do not automatically prevent access, they discourage the publishing of judgments and contribute to a lack of awareness of AGA matters. In fact, the Commissioner has learned that in at least one case with significant precedential value for the interpretation of s. 57 of the AGA heard in the British Columbia Supreme Court, a sealing order restricted the publication on the Reasons for Judgment for seven months after they were released.

While measures to protect adults' identity from unnecessary disclosure can and should be taken, the significant secrecy currently surrounding AGA detentions is cause for concern. Human rights concerns with secrecy — especially in the context of detention — is discussed in more detail in the Legal Context section.

There are worrying indicators of a tendency to unjustified secrecy in relation to AGA detentions. The fact remains that little is known about the effect of a law that has been in place for more than 20 years. Designated agencies' reluctance to be transparent is worrying and it impedes greater understanding of the AGA system. Preventing information about cases from reaching the public prevents the development of the law and consistent practice, leaving AGA detentions largely without oversight. All instances of detention must be reviewable by courts, other public bodies and known to the public, particularly where it affects those who are least able to protect themselves.

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[142] VCHA, *Responding to Abuse, Neglect or Self-Neglect of Vulnerable Adults: For Designated Responder (DR) and Designated Responder Coordinators (DRCs)*, 2, 12, 13.
[143] CLBC, *Adult Guardianship Procedures and Practice Guide*, 2022, 9, 3.7.
[144] *Interpretation Act*, s. 29 "person".
[145] *Provincial Court (Adult Guardianship) Rules*, BC Reg 30/2001, Rule 9(14), https://canlii.ca/t/55gsj; *Policy of the Provincial Court of British Columbia, Access to Court Records*, 26 June, 2024, para. 3.4, https://provincialcourt.bc.ca/system/files/ACC-2.pdf.

Notification of family or support persons

Some designated agency policies do provide that family or support persons should be notified of ongoing AGA actions when and where appropriate, including in investigations of abuse and neglect.[146] There is little guidance in the designated agency policies on when and how notice should be provided to family or a support person. There is almost no guidance on notification to family or a support person when the designated agency believes a family member is abusing or neglecting the adult.

IHA is the only designated agency that has a requirement to notify a support person of the use of s. 59, in addition to notifying the adult.[147] IHA has developed a Notification to Support Person form. The representative from IHA explained that when they were developing their rights notification form, they consulted with patient partners who requested that IHA develop a process for notifying a support person. "The rationale given by our patient partners for wanting that form is because the presumption is, if we're using section 59, the adult is not capable and so the need for notification to a support person came up."[148]

We heard that it can take a significant amount of time for family to learn the whereabouts of adults who have been detained. For example, in Murray and Rose's story below, Rose could not find her detained spouse for three months, even though her spouse was very ill and Rose had important information about her spouse's wishes and immediate care needs.

Notification to the adult's representative — who may or may not also be their primary support person or family member — is discussed below under Role of Adult's Legal Representative in Decision Making.

While the AGA expressly requires that the identity of any person who made a report to a designated agency that an adult is being abused or neglected be kept confidential,[149] there is no requirement to keep the existence of the AGA intervention itself secret. Secrecy, unless necessary to keep the adult safe from their abuser or requested by the adult themselves, has the potential to harm the adult and their family by prolonging the length of a detention and by not considering the adult's needs because those close to the adult are not consulted about those needs.

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[146] VCHA, *Responding to Abuse, Neglect or Self-Neglect of Vulnerable Adults: For Designated Responder (DR) and Designated Responder Coordinators (DRCs)*, 9; IHA, *General Interprofessional Practices, Adult Guardianship Act, Emergency Assistance*, October 2020, 4, 4.7.1.
[147] IHA, *General Interprofessional Practices, Adult Guardianship Act, Emergency Assistance*, October 2020, 4, 4.7.1
[148] BCOHRC interview with IHA, November 1, 2024.
[149] AGA, s. 46(2).

Case Study: Murray and Rose's story

The Commissioner interviewed family members of adults who were detained under the AGA as part of the Inquiry to ground the Inquiry in the experiences of those who have experienced loved ones being detained under the AGA. The Commissioner is extremely grateful to those individuals who took the time to share their stories and experiences with us. Their insights informed our thinking throughout the work of this Inquiry.

Rather than including the stories as they were shared, the Commissioner has made the difficult decision to change the facts of their stories into composites or hypotheticals. The Commissioner made this decision to protect the identity and personal information of all the people involved, including the detainees, and to ensure fairness given that we did not have the opportunity to fully investigate each case nor did the designated agencies have a fulsome opportunity to respond to them.

These composites are based on the experiences and perspectives of the family members who spoke with us. The quotes in the story are the family members' words.

Murray and Rose were married for almost 10 years. Murray has a history of seizures and dementia. One day in 2023, Murray had a fall while Rose was not at home. Police were called to do a wellness check. Murray was taken to the hospital for emergency treatment and never returned home.

While Murray was in the hospital, Rose was able to visit him every day. One day, he was moved without her knowledge to a long-term care facility, based on his son's substitute consent. Despite repeated requests, no one would tell her where he was moved. After searching for her husband for three months, Rose finally found the long-term care home where he was moved. She was there to see him within an hour of finding him. "He just looked up at me—he couldn't believe it was me—he just started to cry.... He said, 'I thought you'd never find me.'"

Rose faced significant restrictions at the long-term care facility, including having to call in advance for permission to see Murray. "I'm trying to have a relationship with him—and I can't have it—because they've taken it away from me."

Despite her efforts, no one would provide Rose with any information. Although she reviewed a document that said Murray was detained under the AGA it was never made clear to her whether Murray was, in fact, detained under the AGA and why the health authority disqualified her as a temporary substitute decision maker. She does not know if the health authority has concerns about her and was never told about her rights or avenues of recourse. She told us that she went everywhere she could think of for help. Though retired, Rose began working a night job to afford to hire a lawyer to apply to court to be Murray's committee.

Rose described the impact of the detention on her and Murray during her interview. She said, "The impact is it's killing him. He wants out — he always wants out. And it's all being thrown back on me in a negative way, to keep me away and to take away all my rights. And his right to have me there too. And any of the things that he would like to do have been totally denied him ... we thought Canada was a country of democracy and freedom. All of our rights are gone. Completely gone."

Notification of counsel

Counsel, once retained, is a legal representative of the adult and should be entitled to the same information that an adult has about their rights and the status of their case.[150] However, during the Inquiry the Commissioner heard that it can be challenging for counsel representing an adult impacted by the AGA to get information from a designated agency. For example, the Commissioner heard that it can take days or weeks for counsel to get even basic information.

VCHA and FHA policies direct staff not to engage with an adult's counsel or to answer only basic questions before directing staff to refer counsel to the adult guardianship team, who may disclose information according to their own processes.[151] Designated agency representatives in other designated agencies confirmed in interviews that their policies are similar and legal counsel for the adult may be required to submit a freedom of information request to access their client's health records. Most of the designated agency representatives noted that counsel could receive a copy of the Certificate of Emergency Assistance and other rights notification forms.[152]

It is not a violation of the *Freedom of Information and Protection of Privacy Act* to share personal information with the person to whom it pertains or with their counsel. While staff are entitled to verify that counsel is a member of a bar association[153] and to direct them to an appropriate person to deal with their request for information, refusing to engage with counsel who has identified themselves as a representative of the detainee is unreasonable and undermines the duty to facilitate access to counsel. The Commissioner is concerned about potential delays in counsel's ability to access their client's records if they are required to access records through a freedom of information request with a 30-business day timeframe for response.

Oversight is lacking

> ***"In the wake of A.H., who will review the practices of designated agencies to ensure compliance with the AGA and the Charter? Fundamentally, who is monitoring the significant exercise of power over a population of adults that have disabilities and health conditions that make them vulnerable to rights violations?"*** [154]

Detention demands objective justification and independent vetting. It demands independent oversight to overcome the possibility of arbitrary detention, error or abuse of power.

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[150] *Interpretation Act*, s. 29, definition of "person" includes a person's legal representative for the purposes of all legislation in British Columbia.
[151] VCHA, *Responding to Abuse, Neglect or Self-Neglect of Vulnerable Adults: For Designated Responder (DR) and Designated Responder Coordinators (DRCs)*, 19; FHA, *Decision Support Tool Adult Protection – Providing Emergency Assistance to Vulnerable Adults in Accordance with Section 59 of the Adult Guardianship Act (AGA)*, April 2023, 3-4.
[152] BCOHRC interviews with VIHA, September 26, 2024; CLBC, October 3, 2024; PHCS, October 31, 2024; IHA, November 1, 2024; VCHA, November 1, 2024; FHA, October 30, 2024.
[153] For example, by asking them for their name and law license number which can then be confirmed with the relevant Law Society.
[154] Letter from the Community Legal Assistance Society to then Attorney General Eby and the Minister of Health Dix, September 19, 2019.

It is extraordinary that there is no independent oversight of detentions of adults under s. 59(2) of the AGA. Given the significant amount of state responsibility and power in s. 59(2) of the AGA, it is notable that the AGA does not specifically include requirements for rights notification or review and that government has not established centralized oversight. If s. 59 of the AGA does allow for involuntary detention beyond warrantless entry with reasonable use of force, transporting an adult to a safe place or providing emergency treatment, it would make the AGA the only statute in Canada that allows for detention of any significant length of time without oversight.

In other contexts, people who are detained have access to the courts or another independent agency with jurisdiction to review the legality of a detention and determinations about adults' capacity. For example, adults who are detained under the *Mental Health Act* can request a review of their detention by the Mental Health Review Board. The review board can determine whether the patient's involuntary detention should continue or whether the patient should be discharged.[155] In Ontario, the Consent and Capacity Board is a tribunal that has jurisdiction to make decisions under six Acts. The Consent and Capacity Board has jurisdiction to review decisions related to detentions in psychiatric facilities, findings of incapacity to consent to treatment and many other decisions on a broad range of issues including substitute decision making, admission to long term care, end of life care, and capacity to make financial decisions.[156]

Court oversight

All detainees have the right under Article 9(4) of the ICCPR to have the legality of their detention reviewed by a court.[157]

> ***"States parties should revise outdated laws and practices in the field of mental health in order to avoid arbitrary detention. The Committee emphasizes the harm inherent in any deprivation of liberty and also the particular harms that may result in situations of involuntary hospitalization.... Deprivation of liberty must be reevaluated at appropriate intervals with regard to its continuing necessity. The individuals must be assisted in obtaining access to effective remedies for the vindication of their rights, including initial and periodic judicial review of the lawfulness of the detention, and to prevent conditions of detention incompatible with the Covenant."[158]***

When designated agencies carry out detentions without a review mechanism it may contribute to long detentions and other human rights violations, such as the lack of procedural safeguards discussed in Finding 3. The existence of an independent oversight mechanism is therefore a key feature required for compliance with human rights standards.

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[155] *Mental Health Act,* s. 25(1).
[156] Ontario Care and Capacity Review Board, https://www.ccboard.on.ca/scripts/english/aboutus/index.asp.
[157] UN Human Rights Committee (HRC), *General comment no. 35 on Article 9,* para. 39.
[158] United Nations General Assembly, *Report of the Working Groups on Arbitrary Detention*, paras. 19, 44.

USE OF COURT ORDERS

Designated agencies report that attempts are made to comply with legislative principles and minimize intrusive interventions including use of s. 59. When s. 59 is used however, designated agencies view going to court for a support and assistance order as a last resort:

> ***"We're always following the legislative principles — the principles of being least intrusive, most effective, court as a last resort, respecting that adults are entitled to live in the manner they wish as long as they're capable and no harm to others. So there's a lot of options that we can explore. We can look at working with that adult or their support person to implement supports to mitigate those risks or to monitor those risks. We're often looking at how to can we support the person where they're at, so we have a better balance of their autonomy and safety rather than moving to something as extreme as a section 59."*** [159]

However, in practice, the court's oversight role is limited because designated agencies rarely apply to the court for support and assistance orders. It is clear from the data below that neither the court's decision in *A.H.* nor the direction from the government have changed designated agency practice on applying for court ordered support and assistance.

> ***"The lack of change following the decision (in A.H.) is also concerning, because it shows how little attention is being paid to rights and protections surrounding these detentions."*** [160]

Since 2020, designated agencies only sought and obtained one court order following use of s. 59 of the AGA. In another three cases, data indicates that court orders were being considered, but its unclear if applications were made. The Commissioner analyzed the length of detentions under s. 59 after January 2020 and notes a significant number of lengthy detentions where designated agencies did not apply for court orders.

- 90.3 per cent of detentions without a court order (215 detentions out of 238 detentions) were longer than three days,
- 67.6 per cent (161 detentions) were longer than five days,
- 29.4 per cent (70 detentions) were longer than 10 days,
- 8.4 per cent (20 detentions) were longer than 30 days
- 3.8 per cent (nine detentions) were over 60 days. These detentions were for 74, 76, 85, 87, 95, 103, 140, 147 and 212 days.

[159] BCOHRC interview with IHA, November 1, 2024.
[160] Comment from Community Legal Assistance Society at BCOHRC's community engagement, October 31, 2024.

In addition, between January 1, 2018 and December 31, 2023, the Public Guardian and Trustee received 17 requests to authorize an assessment of incapability from designated agencies planning to apply for support and assistance court orders and arranged for an assessment of incapability in 13 of those cases.

The "court as a last resort" approach is inappropriate where anything beyond short term detention (limited to those circumstances in which someone's life or serious bodily harm is at stake, and only for as long as it takes to deal with the immediate emergency at hand) is at issue.[161] This issue is discussed in more detail in Finding 4.

HABEAS CORPUS APPLICATIONS

As discussed under Conclusion of emergency assistance *habeas corpus* applications for AGA detainees have been rare. Since s. 59 of the AGA came into force in 2000, there has only been one reported decision on an application for *habeas corpus* from an AGA detainee.[162]

OTHER OVERSIGHT BODIES

There have been two attempts in B.C. at establishing bodies to oversee mental health services and consent and capacity decisions. The closest government ever got to establishing oversight for this population was with the creation of the Health Care and Care Facility Review Board when the HCCCFAA came into force in 2000. However, the Review Board's full jurisdiction was never brought into force and the board was eliminated in 2004.[163] On August 6, 1998 the provincial government appointed a Mental Health Advocate, a first in Canada, to "monitor the performance of the mental health system and make recommendations about services and programs for people with the most serious mental illnesses."[164] Following a change in government, the Mental Health Advocate Office was eliminated in 2001.[165] Despite calls from community to re-establish the Advocate's Office and similar offices being established across Canada, B.C. has never reintroduced the role.

PROVINCIAL OVERSIGHT

Part of the issue is that there is no single independent agency that is tasked with some regulatory role in the implementation of Part 3 of the AGA; rather, multiple agencies have some role — the Attorney General is responsible for the legislation, the Public Guardian and Trustee is responsible for designating designated agencies, the Ministry of Health has some oversight over the health authorities (including responsibility for funding, provincial health legislation and provincial policies) and the Ministry of Social Development and Poverty Reduction has some oversight over Community Living BC. And there are no independent agencies that oversee the exercise of state power in the adult abuse and neglect response system, as the Representative for Children and Youth does for the exercise of state power in the child abuse and neglect response system.

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[161] *A.H. v. Fraser Health Authority*, paras. 99, 125
[162] *A.H. v. Fraser Health Authority.*
[163] BC Law Institute, *Study Paper on Health Care Consent and Capacity Assessment Tribunals,* April 2021, 46-47.
[164] BC Ministry of Health, "Mental Health Advocate Appointed", News Release, August 6, 1998, https://archive.news.gov.bc.ca/releases/archive/pre2001/1998/135.asp.
[165] BC Ministry of Health Services, "Minister of State Ensures Advocacy for Mental Health", News Release, October 30, 2001, https://archive.news.gov.bc.ca/releases/archive/2001-2005/2002HSER0029-000442.htm.

When Part 3 of the AGA was passed in 1993, the Ministry of Attorney General issued some guidance but, despite requests from designated agencies and community, no guidance addressing all of the identified issues has been provided. The Public Guardian and Trustee did develop Practice Guidelines for Incapability Assessment under Part 3 of the AGA, but these guidelines only cover the process of doing incapability assessments within the context of Part 3 of the AGA when a designated agency is intending to apply for a Support and Assistance Order from the Provincial Court. In contrast, when Part 2.1 of the AGA was brought into force in 2014, the Ministry of Health and the Public Guardian and Trustee developed comprehensive guidelines and mandatory training.[166]

It is notable that the government has enacted regulations to guide assessments of incapability under Part 3 of the AGA[167] and statutory property guardianship under Part 2.1 of the AGA[168] but has not developed regulations for designated agencies responding to reports of abuse and neglect under Part 3 including detentions under s. 59. The regulation making authority is contained in section 63 of AGA and includes the authority to make regulations to prescribe forms and certificates and define words and expressions used but not defined in the AGA. Further regulation making authority is found in section 41 of the *Interpretation Act* which provides authority to make regulations that are considered necessary and ancillary to any act, and to provide for administrative and procedural matters for which no provision has been made.[169]

In an interview with BCOHRC staff, the representative from Vancouver Coastal Health Authority explained that "right from day one … we have been looking for guidance…."[170] She noted that the designated agencies have created or contributed to three reports with recommendations for change and requests for support and guidance including the January 2009 Vanguard Provincial Strategy report, Adults and Capability Issues in BC,[171] a Vanguard 2021 Update on the 2009 Provincial Strategy Document on Vulnerable Adults and Capability In British Columbia[172] and the November 2014 A Case for Change Support and Fulfilling the Mandate of Designated Agencies.[173] In the Case for Change report, the Older Adult Abuse and Neglect Response Action Group, a subcommittee of the Council to Reduce Elder Abuse, made 10 recommendations for actions to improve the support required by designated agencies to fulfill their mandate under Part 3 of the AGA. These include identifying a provincial lead for Part 3 AGA, creating structures that are consistent across designated agencies, developing a provincial guide to AGA Part 3, developing provincial standards of practice and competencies for clinical staff, creating a regulation for Part 3 and reviewing the resources required for designated agencies to fulfill their responsibilities.[174] None of these recommendations have been implemented.

[166] Ministry of Health and Public Guardian and Trustee, A *Guide to the Certificate of Incapability Process under the Adult Guardianship Act* and mandatory training.
[167] *Adult Guardianship (Abuse and Neglect) Regulation*, B.C. Reg. 13/2000, https://canlii.ca/t/lck8.
[168] *Statutory Property Guardianship Regulation*, B.C. Reg. 115/2014, https://canlii.ca/t/56c3b.
[169] *Interpretation Act*, RSBC 1996, c. 238, s. 41(a), https://canlii.ca/t/5656s.
[170] BCOHRC interview with VCHA, November 1, 2024.
[171] Adult Abuse/Neglect Prevention Collaborative, *Vulnerable Adults and Capability Issues in B.C. – Provincial Strategy Document*, January 2009, https://www.bcli.org/project/vanguard/.
[172] Canadian Centre for Elder Law, *Update on the 2009 Provincial Strategy Document on Vulnerable Adults and Capability in British Columbia*, April 2021, https://www.bcli.org/publication/8-update-on-the-2009-provincial-strategy-document-on-vulnerable-adults-and-capability-in-british-columbia-a-discussion-paper-and-reference-guide/.
[173] Older Adult Abuse/Neglect Response Action Group - Subcommittee of the Council to Reduce Elder Abuse (CREA), *A Case for Change. Support for Fulfilling the Mandate of Designated Agencies*, November 2015.
[174] Older Adult Abuse/Neglect Response Action Group (CREA), *A Case for Change*, 16-17.

Despite these requests from the designated agencies for updated guidance on Part 3 of the AGA and requests for guidance related to use s. 59, as mentioned above, no comprehensive provincial guidance or training has been developed. As explained in the Case for Change report,

> ***"No single ministry in the provincial government is assigned to lead, or provide direction and support for the designated agencies' mandate. As a result, and over time, the designated agencies developed differing and inconsistent structures and processes.... In order to perform their role in protecting vulnerable adults, designated agencies require, but have yet to be afforded this critically important provincial linkage."*** [175]

With respect to oversight, the Public Guardian and Trustee told the Commissioner that they do not have any statutory role in overseeing the designated agencies carrying out their functions under Part 3 of the AGA. Under s. 61 of the AGA, the PGT can organize networks of public bodies, organizations or persons for the provision of support and assistance to abused or neglected adults; establish an agency to assist in planning or developing a network of public bodies, organizations or persons and in training staff; and research the most effective ways of providing community and other services to carry out the purposes of the AGA. The PGT does coordinate province-wide standing committees where policy and practice is discussed,[176] and has and continues to work closely with community partners, health authorities, professional, government and Indigenous communities on initiatives to promote best practices under Part 3 of the AGA.

Given this patchwork of responsibility and lack of explicit authority for any one agency to provide oversight, it is perhaps not surprising that no single agency has developed provincial policies for Part 3, data collection standards or quality assurance mechanisms.

COMPLAINT MECHANISMS

There are complaint bodies that can investigate complaints related to a detention under s. 59, although, importantly, none of these bodies has authority to review the decision to detain itself and to order a designated agency to release a person who is being detained. Each of the health authorities has a Patient Care Quality Office (PCQO) and a Patient Care Quality Review Board (PCQRB). The PCQO can investigate "care quality" complaints about the delivery of, or the failure to deliver, health care; the quality of health care delivered; the delivery of, or the failure to deliver, a service relating to health care; and the quality of any service relating to health care.[177] If a person is not satisfied with the results of the complaint to a PCQO they can request a review by the PCQRB. Similarly, Community Living BC has an internal complaints resolution process through CLBC's Quality Assurance Office. Adults who have been detained by CLBC under s. 59 can also contact the Advocate for Service Quality for CLBC with complaints and concerns.

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[175] Older Adult Abuse/Neglect Response Action Group (CREA), *A Case for Change*, 7.
[176] Public Guardian and Trustee, *Annual Report 2022-2023*, 25; BCOHRC interviews with NHA, October 3, 2024; CLBC, October 3, 2024.
[177] *Patient Care Quality Review Board Act,* SBC 2008, c. 35, s. 1

Finally, the Office of the Ombudsperson is an independent officer of the legislature that can investigate complaints about any provincial government body including the designated agencies, as well as initiate systemic investigations. The Ombudsperson investigates complaints to ensure that public bodies are treating people fairly and has authority to negotiate settlements to complaints and to issue non-binding recommendations. The Ombudsperson has done considerable work in this area, including completing systemic investigations into seniors' health care, detentions under the *Mental Health Act* and the process of issuing certificates of incapability under the *Adult Guardianship Act*.

Finding 3: Adults' rights to fair process have not been adequately respected

> ***"There is no other system where a statute without any access to independent oversight, no time limits, no right to counsel, no right to legal advice, there is no other universe where we say that that system allows weeks or months of detention.... The statute says you can transport someone to safe place ... but to extend that into lengthy detentions, with few procedural protections is baffling."***[178]

Detention is a significant interference with liberty. Article 9 of the *International Covenant on Civil and Political Rights*, which Canada has ratified, requires that detention be accompanied by adequate safeguards to prevent arbitrariness.[179]

Such safeguards include rights notification; reasons for detention[180] and full and frank disclosure of the information on which the decision to detain is based;[181] access to counsel;[182] and independent oversight and periodic review procedures (addressed above).[183]

As described below, most of these safeguards are lacking for s. 59 AGA detentions both in law and in practice.

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[178] Comment from Community Legal Assistance Society at BCOHRC's community engagement, February 8, 2024.
[179] UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, para. 19.
[180] UN Human Rights Committee (HRC), *General Comment 35 on Article 9,* para. 24.
[181] UN Human Rights Committee (HRC), *General Comment 35 on Article 9,* para. 25.
[182] UN Human Rights Committee (HRC), *General Comment 35 on Article 9,* paras. 23, 46, 58, 59.
[183] UN Human Rights Committee (HRC), *General Comment 35 on Article 9*, paras. 4, 19, 44.

Rights notification

Anyone who is detained by the state has a right to be notified about their rights (this is distinguishable from the right to access counsel, which is detailed below). As detailed in the Legal Context section (page 20–21), the ICCPR requires that rights notification to be provided immediately, except in exceptional cases, in a language and means that is accessible to enable understanding particularly for people with mental or physical impairment. It also requires that the reasons for detention provided to the adult include the factual and legal basis for the detention. Most designated agencies have taken steps to ensure that rights notification is provided and is documented in their systems. However, as discussed in detail below, the evidence from these records reveals that rights notification is at best inconsistent and incomplete, and at worst, nonexistent.

Since the release of the *A.H.* case in 2019, most of the designated agencies (VCHA, PCHS, FHA, VIHA, IHA, CLBC), have updated their policies and training materials to provide that following an emergency intervention, an adult must be notified of their rights.[184] Prior to the release of the decision in *A.H.,* only CLBC's policy referred to keeping adults aware of their rights when offering support and assistance,[185] although some designated agency representatives indicated in interviews that the agencies always made efforts to keep adults informed.[186] After the *A.H.* case, most designated agencies developed rights notification forms. The exception is Northern Health Authority (NHA); although they report not relying on s. 59 at all (as indicated in the table on page 46), NHA does not appear to have any rights notification procedures in place should it become necessary to do so.

Most of the designated agencies do not provide a timeframe for providing rights notification but rather direct staff to do so as soon as it is safe and clinically appropriate,[187] immediately or when clinically reasonable[188] or practical.[189] Rights notification might be provided in community when a designated agency is accessing an adult or when they are being conveyed or transported to a safe place, however, the designated agency representatives confirmed that it is typically provided after an adult is admitted to hospital when it is appropriate to do so.

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[184] VCHA, *Responding to Abuse, Neglect or Self-Neglect of Vulnerable Adults: For Designated Responder (DR) and Designated Responder Coordinators (DRCs)*, Appendix B; VCHA, *Providing Notification of Patient Rights when utilizing Emergency Assistance under Sec 59 of the Adult Guardianship Act*, August 2020; FHA, *Adult Protection - Providing Emergency Assistance to Vulnerable Adults in Accordance with Section 59 of the Adult Guardianship Act (AGA)*,1, 3-4; IHA, *General Interprofessional Practices, Adult Guardianship Act, Emergency Assistance*, October 2020, 4, 4.7.1, p. 5, 4.10; CLBC, *Provide AG Emergency Assistance Process Diagram*; VIHA, *Adult Guardianship Act Emergency Assistance* 9.3.7G, 1, 1.0; VIHA, *An Introduction to Adult Guardianship Legislation and Practice For Designated Responders and Designated Responder Coordinators*, Module 7.2, Emergencies and the AGA, Slide 23, PHCS, *Document # B-00-07-14503, Adult Protection: Abuse, Neglect or Self-Neglect of Vulnerable Adults. Designated Responder Guideline*, 30 March 2021, 5.

[185] CLBC, *Adult Guardianship Procedures and Practice Guidelines*, April 2018, 41.

[186] BCOHRC interview with PHCS, October 31, 2024.

[187] VCHA, *Responding to Abuse, Neglect or Self-Neglect of Vulnerable Adults: For Designated Responder (DR) and Designated Responder Coordinators (DRCs)*, 8; FHA, *Decision Support Tool Adult Protection – Providing Emergency Assistance to Vulnerable Adults in Accordance with Section 59 of the Adult Guardianship Act (AGA)*, April 2023, 3; BCOHRC Interview with IHA November 1, 2024.

[188] PHCS, *Document # B-00-07-14503, Adult Protection: Abuse, Neglect or Self-Neglect of Vulnerable Adults. Designated Responder Guideline*, 30 March 2021, Appendix B: Notification of Emergency Assistance and Rights, 11.

[189] VIHA, *Adult Guardianship Act Emergency Assistance* 9.3.7G,1, 1.0.

However, the designated agencies' data show that detained adults received notification of rights in only about two thirds of total detentions (67.6 per cent, 230 detentions). This means that the designated agencies have no record of providing rights notification to adults in about one third of all detentions under the AGA (32.4 per cent, 110 detentions). Of the 230 detentions where rights notification was provided, notification was provided orally in 226 cases (66.5 per cent of 340 detentions) and in writing 173 times (50.9 per cent of 340 detentions). In almost half of all detentions (49.1 per cent), adults never received a copy of a notification of rights form or "certificate" (that is, written documentation of their detention).

The Commissioner analyzed the data she received to determine whether the practice of providing written rights notification has improved since the court's decision in *A.H.* was released. The Commissioner found that between 2018 and 2019, rights notification was provided in writing only 20.6 per cent of the time, which rose to 63.9 per cent during 2020 to 2023. Although the practice of providing written rights notification has improved since *A.H.*, 63.9 per cent is still far too low. Rights notification is generally provided by designated responders in conversation with the adult. Designated responders in VCHA, PHC, CLBC, and IHA provide adults with a rights notification form or brochure and a Certificate of Emergency Assistance.

Certificates of Emergency Assistance were created by the designated agencies and are modelled on forms prescribed under the *Mental Health Act*.[190] It is important to note, that unlike with the *Mental Health Act*, these certificates are not part of the regulations under AGA. NHA and VIHA do not use Certificates of Emergency Assistance, but VIHA has rights notification forms.

Content of rights notification

According to designated agencies' policies, rights notification generally includes the reasons for the adult's detention (discussed below), notification of the right to contact a lawyer and, with the exception of VIHA, notification of the right to apply to court.[191] Some designated agencies may provide additional information setting out that adults have the right to know why they are being held, the right to know where they are and where they are going, the right to contact a lawyer at any time and the right to use a telephone to contact the lawyer and the right to ask a judge to review the use of emergency assistance.[192]

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[190] CLBC, *Rights Notification Form*; VCHA, *Rights Notification Form*; VIHA, *Rights Notification Form*; PHCS, *Rights Notification Form*; IHA, *Rights Notification Form.*

[191] CLBC, *Rights Notification Form*; VCHA, *Rights Notification Form*; VIHA, *Rights Notification Form*; PHCS, *Rights Notification Form*; FHA, *Understanding Your Rights Pamphlet*; IHA, *Rights Notification Form.*

[192] FHA, *Understanding Your Rights Pamphlet*; VCHA and PHCS *Understanding Your Rights Pamphlet.*

However, the rights notification and information provided by the designated agencies about the recourse available to the adult does not accurately capture the remedies that are available to a detainee.[193] In particular:

- Information about a right of appeal to the British Columbia Supreme Court is incorrect. The decision of a health authority to detain someone under s. 59(2) is not an order that can be appealed. Rather it is an administrative action that can be judicially reviewed. An order that can be appealed is a support and assistance order made by the Provincial Court of British Columbia, which do not exist in most s. 59(2) cases.
- Information does not clearly or correctly advise the detainee of their right to apply for a writ of *habeas corpus* to challenge a detention that may be unlawful. A *habeas corpus* procedure is not the same as an application for judicial review.[194]
- Information does not provide an adult with a complete overview of the remedies available to them short of an application to the courts, such as a complaint to the Ombudsperson.

If the certificate is renewed, IHA policy directs staff who feel that an adult has forgotten their rights to review the rights with the adult.[195] VCHA also directs staff to provide rights notification again if clinically appropriate.[196] However, none of the other designated agency policies require staff to give rights advice at different points in the detention, regardless of whether it is longer than five days.

It is also unclear whether any of these forms are available in languages other than English or what other forms or means of communication are used. FHA noted that they can provide an interpreter when needed. In addition, a representative from Inclusion BC noted,

> ***"One of the biggest struggles that the people we work for, and with, experience is the lack of access to justice … one of the biggest pieces is the language that is used and how being informed verbally about your rights in a detained situation for a person who might have executive functioning and language processing difficulties, leaves them really, really vulnerable."***[197]

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[193] The BC Court of Appeal raised similar concerns about inaccurate descriptions of rights to appeal and judicial review on forms under the *Mental health Act* on which the AGA forms appear to be modelled at least in part in *Gilbert v. British Columbia (Mental Health Review Board)*, 2025 BCCA 54, paras 15-17.

[194] Although the rights notification refers to the right of judicial review by the British Columbia Supreme Court, a writ of *habeas corpus* contemplates a different burden of proof more favourable to the detainee, is mandatory unlike judicial review (that is, an order requiring release must be issued if the detention is shown to be illegal), and is usually intended to be dealt with much more expeditiously. Correct rights notification would inform the detainee that they have the right to judicially review any decision made by the designated agency under the AGA and/or to apply for a writ of *habeas corpus* to challenge an unlawful detention e.g. *Mission Institution v. Khela*.

[195] IHA, *General Interprofessional Practices*, *Adult Guardianship Act*, *Emergency Assistance*, October 2020, 5, 4.10.

[196] VCHA, *Practice Update, Providing Notification of Patient Rights when utilizing Emergency Assistance under Sec 59 of the Adult Guardianship Act*, Aug 2020, 2; VCHA, *Responding to Abuse, Neglect or Self-Neglect of Vulnerable Adults: For Designated Responder (DR) and Designated Responder Coordinators (DRCs)*, 13.

[197] Comment from Inclusion BC at BCOHRC's community engagement, October 31, 2024.

Provision of reasons for detention

> ***"[D]ocumentation and reporting out is really important because when people who aren't legally trained … are making decisions in a really low visibility environment … there's no way for us to know if there are violations of people's rights … making an administrative decision maker reduce their reasons to writing at the time that they're making the decisions, can prevent some violations of rights because it makes the decision maker turn their mind to those questions … and could have a significant protective effect."***[198]

As discussed above, Article 9(2) of the ICCPR requires that all persons who are arrested be provided with reasons for their detention,[199] and the United Nations Working Group on Arbitrary Detention explains that reasons must be disclosed without delay.[200]

FHA and CLBC policies indicate that staff should provide the adult with a completed Certificate of Emergency Assistance, which has a field titled Additional Details Regarding this Intervention. This field may be used to provide reasons. However, there is little other guidance for how this field should be filled out and little space to include substantive details. Moreover, while other designated agencies do fill out the Certificate of Emergency Assistance, not all designated agencies provide it to the adult. During interviews for this Inquiry, the Commissioner learned that some designated agencies view the Certificate of Emergency Assistance as a communication tool that may be provided to staff and other professionals, whereas other designated agencies also provide it to detained adults, to whom it can provide some form of reasons for their detention.[201]

Other designated agencies (VCHA, PHC, IHA and VIHA) direct staff to provide adults with a rights notification form that includes reading out the reasons for the detention provided on the form.[202] However, these reasons merely re-state the text of s. 59(1) of the AGA in providing general reasons or basis for the detention, but do not provide much or any factual basis—that is, they do not actually explain to the adult or a reviewing court why the designated agency is of the view that the circumstances of s. 59 are met. In particular, they do not explain what "reasonable grounds"[203] exist for detention or what evidence the designated agencies relied on in their determination. Reasons are not provided consistently to family members or other support persons—indeed, even the very fact of detention is sometimes hidden (as described above).

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[198] Comment from BC Civil Liberties Association at BCOHRC's community engagement, February 8, 2024.
[199] UN Human Rights Committee (HRC), *General comment no. 35 on Article 9,* para. 24.
[200] United Nations General Assembly, *Report of the Working Groups on Arbitrary Detention, United Nations Basic Principles and Guidelines on Remedies and Procedures of the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, paras 67-68.
[201] BCOHRC interview with IHA, November 1, 2024.
[202] VCHA, *Rights Notification Form*; VIHA, *Rights Notification Form*; PHCS, *Rights Notification Form*; IHA, *Rights Notification Form.*
[203] "Reasonable grounds to believe" is a legal term of art that appears in other contexts where laws authorize detention such as the forms prescribed by the *Mental Health Act*. It is noted on the AGA forms which are based on MHA forms, but it does not appear in the AGA and is not an accurate reflection of the standards in it.

With respect to the timing, content and form of reasons, the court in *A.H.* noted,

> [151] The urgent nature of a decision does not justify the failure to provide adequate reasons when adequate reasons can be provided promptly after the fact. In *Charlie*, Affleck J. held that written reasons must be provided to detained individuals before the decision is implemented, or as soon as practicable after the decision is made, in other contexts where there may be a need for detaining authorities to act urgently. He explained that in the context of a detention, it is not enough for the reasons to reflect "generalized information", but the individual must be told the "who, what, where and when" of the alleged facts leading to the decision: para. 34.
>
> [152] [...] at minimum, those reasons ought to have clearly set out the specific facts underlying the decision, explained how those facts related to and met the criteria for emergency assistance under the AGA, and advised of the nature and anticipated timing of a s. 54 application. Without those details, it was not possible for A.H. to decide whether to submit to the detention or to meaningfully exercise her right to counsel.
>
> [153] Adults subjected to the emergency assistance provisions of the AGA are by definition among the most vulnerable members of our society. They may have memory problems, cognitive impairments, or mental health symptoms that make comprehension and recall more challenging. They may be taking psychotropic medications with side effects that impact cognitive functions like concentration. They will likely be experiencing significant distress, making cognitive tasks more challenging. It is unrealistic and unfair to expect a person in these circumstances to hear, understand, and remember verbal reasons for any particular emergency intervention.

The court found that verbal reasons were "woefully inadequate" and that written reasons were required in A.H.'s circumstances.

It is clear from *A.H.* that rights notification and reasons for detentions under s. 59 should be in writing, and should be provided before the decision is implemented or as soon as practicable after the fact. It is also clear that reasons must clearly set out the facts underlying the decision, explain how those facts meet the criteria for emergency assistance and advise of anticipated timing of a court application. It is not clear that any of the designated agencies are providing fulsome written reasons that would meet this standard.

Access to legal and rights advice

> ***"There is no established legal aid funded service, contract, or tariff in place for adults to obtain legal advice or representation when facing loss of liberty or other fundamental constitutional rights pursuant to the AGA, either through habeas corpus proceedings or representation in Provincial Court applications that designated agencies should have been making to seek authorization of proposed detention and other non-consensual measures."*** [204]

As described on page 21, Article 9(4) of the ICCPR and the UN Body of Principles for the Protection of All Persons Under Any Form of Detention require that all detainees, including those detained in hospital, be afforded prompt and regular access to counsel, that counsel be free for those without means to pay and that private communication with counsel be facilitated in a timely way.[205] Denial of access to counsel may result in procedural violations of this Article.[206]

Access to counsel and advice about rights during a detention is especially important given the imbalance of power and resources between the detainee and the state. It is even more important in the context of the AGA, where the detainee — a person who is considered abused and neglected — is also perceived to be apparently incapable of deciding to accept or refuse support and assistance. Such a detainee may be even less able to defend their rights without legal help.

As described above, human rights standards require prompt, if not immediate, access to counsel for detainees.[207] Unfortunately, the designated agencies have limited options to facilitate access to counsel and rights advice in the immediate aftermath of a detention. Unless the detainee has the means to hire their own counsel whom the designated agency can assist a detainee to call, there is no program or organization that has been established or funded to specifically provide legal services to adults impacted by the AGA.[208] There is no existing rights advice service which detainees can connect with immediately if detained under s. 59(2) or otherwise, nor is there access to duty counsel. In contrast, for criminal matters, a toll-free telephone service known as a Brydges Line is immediately available to provide advice to people who are arrested, detained or under active investigation.[209] Similarly, while Legal Aid BC may fund an application for legal advice and representation for people who are detained in criminal, immigration, prison and — to a limited extent — *Mental Health Act* matters, they don't receive specific funding to provide access to counsel

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[204] Letter from the Community Legal Assistance Society to then Attorney General Eby and the Minister of Health Dix, November 19, 2019.
[205] UN Human Rights Committee (HRC), *General comment no. 35 on Article 9,* paras. 46, 58, 59; *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principles 11, 17, 18.
[206] UN Human Rights Committee (HRC), *General comment no. 35 on Article 9 ,* para. 59.
[207] UN Human Rights Committee (HRC), *General comment no. 35 on Article 9,* para. 46.
[208] BCOHRC interview with Legal Aid BC, May 15, 2024; Comments from BCOHRC'S community engagement, February 8, 2024.
[209] In Canada a *Brydges* Line is a toll-free telephone service available 24 hours a day, 7 days a week, staffed by lawyers who provide criminal law advice to people detained or arrested. In B.C., it is operated by Legal Aid BC: https://legalaid.bc.ca/services/advice/brydges-line; See also *A Review of Brydges Duty Counsel Services in Canada*, (Government of Canada: 2022), https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr03_la4-rr03_aj4/p9.html.

to AGA detainees, and in practice, services for AGA detainees do not extend beyond the rare *habeas corpus* application and response to an application for or appeal of a support and assistance order.[210]

AGA detainees also do not have access to any independent rights information services. It is notable that the government did not include AGA detainees in the non-lawyer Independent Rights Advice Service for *Mental Health Act* detainees that it funded and launched in early 2024, despite requests from community. Given that government has been aware of issues surrounding rights advice for adults who are detained under the AGA since at least 2019, it is unclear why government chose not to extend the rights advice services to AGA detainees.

Designated agencies reported facilitating access to legal counsel in less than half of total detentions (44.1 per cent, 150 detentions). It is unclear exactly what the designated agencies consider "facilitating access to counsel". While, in response to the Commissioner's order, some of the designated agencies offered examples of the steps they took, not all did so.

VCHA, PHC, FHA, CLBC and VIHA direct staff to advise a detainee about their right to contact a lawyer and to provide a brochure or other form with contact information.[211] However, this information is not always provided at the outset of a detention and the information provided is not always accurate. For example, the current VCHA, PHC brochure and CLBC form contain contact information for the Community Legal Assistance Society (CLAS), the Officer of the Senior's Advocate (OSA) and Access Pro Bono's Lawyer Referral Service.[212] IHA also notes that staff are required to provide adults with a phone for CLAS if they cannot afford a lawyer.[213] However, the Commissioner has learned that CLAS is not funded to provide legal representation or advice to AGA detainees and that most designated agencies did not contact CLAS before including this referral in their brochures and rights advice information.[214] Similarly, the Senior's Advocate does not provide individual advocacy. The documents provided are missing the contact information for Legal Aid BC, which is the primary organization that can provide a lawyer for relevant services.[215]

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[210] BCOHRC interview with Legal Aid BC, May 15, 2024; Comments from BCOHRC'S community engagement, February 8, 2024.
[211] CLBC, *Rights Notification Form*; VCHA, *Rights Notification Form*; VIHA, *Rights Notification Form*; PHCS, *Rights Notification Form*; FHA, *Understanding Your Rights Pamphlet*; IHA, *Rights Notification Form*; VCHA and PHCS *Understanding Your Rights Pamphlet.*
[212] PHCS and VCHA, Understanding Your Rights brochure; CLBC, *Rights Notification Form.*
[213] BCOHRC interview with IHA, November 1, 2024.
[214] Comments at AGA roundtable February 8, 2024; BCOHRC Interviews with FHA, October 30, 2024; VCHA, November 1, 2024; IHA, November 1, 2024.
[215] Legal Aid BC, *Lawyer Orientation Manual, What you need to know about Legal Aid Work*, 2024, 63, https://legalaid.bc.ca/sites/default/files/inline-files/What-you-need-to-know-about-legal-aid-work-2024.pdf.

FHA and VIHA do provide the contact information for Legal Aid BC in their brochure and rights notification form, respectively.[216] It is unclear whether NHA would be prepared to do so if it relied on s. 59. CLAS wrote to the government on September 19, 2019, after the *A.H.* decision was released, urging the government to establish appropriate legal services for AGA detainees. CLAS explained:

> ***"the Mental Health Law Program at CLAS is contracted by the Legal Service Society [Legal Aid BC] to provide representation to Mental Health Act detainees challenging their detention before the Mental Health Review Board — they are not permitted to provide service to AGA detainees. As a temporary crisis measure, the Law Foundation-funded Community Law Program has been attempting to provide what services it can to AGA detainees since this time. However, it is not within the funding mandate or capacity of the Community Law Program to provide the constitutionally required legal advice and representation to all detainees in BC facing loss of liberty and other significant rights due to state action."***[217]

It seems inexplicable that, to date, and in the nearly six years since *A.H.* was released, the government has not established rights advice or any legal services for AGA detainees. It is important to note that once the adult does have counsel, counsel's access to information about the adult is essential to meaningfully fulfil the right to access counsel. Counsel's access to the adult's whereabouts and other information is addressed above under Notification of Counsel under Finding 2.

Role of adult's legal representative in decision making[218]

Section 45(2) of the AGA specifies that Part 3 of the Act does not override the health care consent rights that adults have in B.C., namely the right to consent to or refuse proposed health care when capable of making that decision and the right to have a representative or guardian consent to or refuse proposed health care in accordance with the adult's wishes expressed while capable, even if the refusal will result in the adult's death.

While most designated agency policies direct staff to determine if there is a legal representative, their policies do not provide guidance on how the designated agencies treat the existence of a legal representative authorized through a representation agreement (or substitute decision makers more broadly) when providing emergency assistance that results in detention under s. 59 of the AGA or when investigating concerns about abuse, neglect or self-neglect. IHA is the only designated

[216] FHA, *Understanding Your Rights Pamphlet*, VIHA, *Rights Notification Form.*
[217] Letter from the Community Legal Assistance Society to then Attorney General Eby and the Minister of Health Dix, September 19, 2019.
[218] As this report is focussed on detention under s. 59(2), this section refers to legal representatives that are empowered to make personal and health care decisions, in particular those representatives who may have authority to consent to or refuse an admission to hospital or other care facility and not those empowered by a power of attorney in British Columbia to make financial decisions.

agency that expressly provides a notification form indicating the use of emergency assistance to a representative, if they are the adult's "most appropriate support."[219] Other designated agencies' policies mention legal representatives in a variety of ways. VIHA has a guideline on abuse and neglect by a legal representative that provides that if a designated responder believes that a legal representative may be responsible for abuse or neglect, they may, following an AGA investigation, recommend a referral to the Public Guardian and Trustee. The designated responder's recommendation to refer to the PGT is then reviewed by Clinical Risk Management and/or the Adult Guardianship Office for approval.[220]

Yet it is not clear from any designated agency policy or guidance what action is to be taken by staff if a representative disagrees with the designated agency's assessment of the adult's needs and whether emergency assistance, other than emergency health care under s. 12.2 of the HCCCFAA, can be provided contrary to a representative's direction or wishes. The decision on whether or not to follow a representative's guidance in an emergency situation appears to be made on a case-by-case basis and it is not clear how s. 45(2) of the AGA is factored into the designated agencies' decision-making process. Representatives from IHA, CLBC, FHA and VIHA stated in interviews with the Commissioner's staff, and VCHA and PHC confirmed in letters to the Commissioner, that if they identify a representative who can consent to health care it makes the use of s. 59 unnecessary.[221] However, in interviews with the Commissioner's staff, designated agency representatives also indicated that, where the criteria for intervention are met, they consider that s. 59 might be used to provide emergency assistance, including to detain an adult, despite a representative's directions.[222] IHA's representative also noted that the only time they do not follow the direction of a representative is when IHA suspects the representative to be the actual abuser or neglector and that they would need legal advice in that situation.[223] It is not clear whether that direction is provided to IHA staff, given that it is not in the policy itself.

During interviews with family members conducted for this Inquiry, Commissioner's staff heard concerns about legal representatives not being provided with information about the adult's detention; about having their authority disregarded by the designated agency and about challenges faced by family members in being appointed by the court to be a committee of the adult's person and/or estate.

While the AGA does not provide any mechanism for designated agencies to act contrary to the wishes of the adult as communicated by the adult's substitute decision maker, there may be good reasons to do so if they are suspected of being responsible for the abuse or neglect of the adult. Yet, as indicated by the Commissioner's interviews with family members, the manner in which s. 59 is currently applied to detain adults after the emergency has ended and the lack of clarity as to whether or when it can be used to override the wishes of an adult's substitute decision maker has the potential to upend the legal value of representation agreements. This is because it seems

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[219] IHA, *General Interprofessional Practices, Adult Guardianship Act, Emergency Assistance,* October 2020, 4, 4.7.1.
[220] VIHA, *Guideline, Abuse and Neglect by Legal Representatives, 9.1.19G,* 2019.
[221] BCOHRC interviews with VIHA, September 26, 2024; CLBC, October 3, 2024; FHA, October 30, 2024; IHA, November 1, 2024.
[222] BCOHRC interviews with CLBC, October 3, 2024; PHCS, October 3, 2024, although PHSC's representative indicated they did not think PHCS had ever overridden the authority of a representative; FHA, October 30, 2024.
[223] BCOHRC interview with IHA, November 1, 2024.

to create a substantial loophole in the requirements of designated agencies to comply with the representatives' directions. This is problematic since health care providers should not ignore a representative's instructions because they don't like or don't agree with the answer, unless the decision is putting the adult at risk of harm.

The Public Guardian and Trustee is empowered to investigate reports that representatives are misusing their authority and to apply to court to vary or revoke legal instruments providing for representatives' authority.[224] During this Inquiry, the Public Guardian and Trustee indicated that they have authority to investigate allegations of abuse by a representative under the *Representation Agreement Act* and against a power of attorney under the *Power of Attorney Act,* though the time required for such investigations can vary depending on the circumstances. This process is separate from processes under the AGA and may or may not occur on the same timelines which may not be helpful to determining under s. 59 whether designated agencies should be following the guidance of the representative in situations of alleged abuse.

In the Commissioner's view, if designated agencies and health care providers are not seeking consent from a representative, or if they ignore a refusal to consent when they don't agree with the representative's decisions, then it renders the *Representation Agreement Act* meaningless. Unless a representative's powers have been cancelled through a formal process, there is a restraining or no contact order in place, the representative is perceived to pose a safety risk to the adult, or where s. 12.2 of the HCCCFAA is used to provide emergency health care, health and social service providers have to respect a representative's decision as if it was the adult's decision.

[224] *Power of Attorney Act*, ss. 34-35; *Representation Agreement Act*, ss. 30-31; *Patients' Property Act*, s. 6.

Case study: Khadija's legal representative

The Commissioner interviewed family members of adults who were detained under the AGA as part of the Inquiry to ground the Inquiry in the experiences of those who have experienced loved ones being detained under the AGA. The Commissioner is extremely grateful to those individuals who took the time to share their stories and experiences with us. Their insights informed our thinking throughout the work of this Inquiry.

Rather than including the stories as they were shared, the Commissioner has made the difficult decision to change the facts of their stories into composites or hypotheticals. The Commissioner made this decision to protect the identity and personal information of all the people involved, including the detainees, and to ensure fairness given that we did not have the opportunity to fully investigate each case nor did the designated agencies have a fulsome opportunity to respond to them.

These composites are based on the experiences and perspectives of the family members who spoke with us. The quotes in the story are the family members' words.

Khadija is an 85-year-old Muslim woman. Her son, Amir, is her legal representative. Khadija has dementia and some mobility issues. One day, she felt ill. An ambulance was called and paramedics recommended that she go to the hospital to be checked. Amir told us, "She agreed to go. She never returned home."

Amir asked about his mother's discharge plan. The health authority never responded. Amir said he was not given any reasons, rights advice, contact information for a lawyer or information about any recourse they might have.

Amir described his mother's stay at the hospital as very upsetting.

> ***"She was put into a holding ward in their emergency section for approximately two weeks before a bed became available in the hospital. And then when a bed became available, she was put in a hallway in front of the nursing station ... with no dignity, no peace, no quiet, no privacy and exposed to illness and disease."***

In hospital, Khadija was given non-halal meals which did not adhere to her religious practices. Amir felt like the medical staff made discriminatory comments about Khadija's religious practice of wudu, which requires washing five times a day. His mother was moved many times, making it difficult to reach her and she became increasingly isolated.

Amir described being pressured to accept a long-term care placement for his mother, although neither he nor Khadija felt it was suitable given Khadija's religious and cultural needs and they were concerned about Khadija being away from her community. Amir was told that if he didn't accept the placement that they would complain about his role as his mother's representative to the Public Guardian and Trustee.

The following day Amir received a call saying that his mother had been transferred to long-term care. "They told my mother that they were sending her home and so she went happily." Amir said that when his mother was first admitted to long-term care, she stopped taking her medication and stopped co-operating with staff. No one from the long-term care facility contacted Amir regarding his mother's personal items, religious, cultural or dietary needs.

With respect to the impact on his mother, Amir said:

> ***"She spent her 85th birthday in the hospital, observed Ramadan, Eid al Fitr, Eid al-Adha along with many other significant occasions alone. We've missed the opportunity to create memories with her since her detention. How does this contribute to her health, safety and well-being?"***

With respect to the impact on himself and his children, Amir said:

> ***"For the first time, I was unable to speak with my mother on my birthday.... My children, too, have lost their cherished daily interactions with their grandmother. The magnitude of this loss is immeasurable and beyond my understanding. As someone born and raised in Canada, this experience does not align with the values I've been taught to uphold."***

Revolving detentions under AGA and Mental Health Act

During community engagement sessions for this Inquiry, the Commissioner heard concerns about the "moving cups of detention" where adults are detained under one statute and then subsequently detained under another.[225]

Data reviewed for this Inquiry shows that 16.5 per cent (56 of 340) of AGA detentions ended with the adult being certified under the *Mental Health Act.*

The Commissioner also heard or reviewed the following concerns about the interplay between the MHA and the AGA:

- Adults are sometimes simultaneously detained under the MHA and AGA.[226] CLBC reported to the Commissioner that three of the 18 adults they detained between 2018 and September 2023 were simultaneously certified under the MHA at the same time as s. 59 of the AGA was being used. For all three of those individuals, s. 59 was used to ensure that they remained in hospital for life-preserving medical treatment.
- Adults are sometimes sequentially detained under the two Acts.[227] CLBC reported to the Commissioner that 1 of the 18 adults they detained between 2018 and September 2023 was certified under the MHA immediately prior to the use of s. 59 of the AGA. When this individual was discharged from being an involuntary patient under the MHA, CLBC used s. 59 to place the individual into a CLBC home.[228]
- Staff are sometimes using s. 59 of the AGA when mental health diagnoses could not be found to support an MHA detention, by viewing an adult as self-neglecting and needing help.[229]
- Adults do not always know or understand whether they are being detained under the AGA or the MHA or both, what the differences are between the statutes or what their rights are under them, which underscores the importance of rights advice.
- Police are sometimes reluctant to detain adults under the AGA framework without clear authority under the AGA to do so, resulting in reliance on the MHA even where the AGA may be more appropriate.[230]

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[225] Comment by the Canadian Mental Health Association BC Branch at BCOHRC's community engagement February 8, 2024.
[226] Health Justice, *Unpacking Assumptions*, 14.
[227] Health Justice, *Unpacking Assumptions*, 14.
[228] Letter from CLBC to Commissioner, January 22, 2024.
[229] Health Justice, *Unpacking Assumptions*, 14.
[230] Records obtained in response to information requests sent to the Ministry of Attorney General and the Ministry of Health; See also *A.H. v Fraser Health Authority*, para. 31.

There are a number of examples of this confusion. Notably, in *A.H.* the court described how the AGA and MHA were used in that case

> [30] A.H. did not want to be detained.... Each time she returned to her mother's house and each time the police returned A.H. to hospital against her will.
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> [31] The police told FHA that they did not have the authority to apprehend and detain A.H. against her will and advised that forms completed pursuant to the Mental Health Act, RSBC 1996, c. 288, following certification of A.H. under that legislation, could extend the requisite authority to them. On October 16, 2016, FHA administrators instructed Delta Hospital to complete a Certificate of Involuntary Admission (Form 4) under the *Mental Health Act* to authorize police to apprehend A.H. and transport her to hospital for admission and detention for a 48-hour period. However, the procedures for *Mental Health Act* certification were not followed and there is no evidence that A.H. was certifiable under that legislation. To the contrary, throughout her detention, A.H.'s health care providers documented that she had no acute psychotic symptoms and was stable from a mental health perspective. She was referred to as a "social admission". In any event, any authorization to detain under the *Mental Health Act* Form 4 expired after 48 hours.
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> [32] Following the third escape from Delta Hospital, A.H. was involuntarily admitted to SMH instead of Delta Hospital because a secure ward was available in Surrey. Another Certificate of Involuntary Admission (Form 4) under the *Mental Health Act* was completed at SMH but, again, there is no evidence that A.H. was certifiable. In any event, any detention authorized by that Form 4 expired after 48 hours.
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> [33] FHA continued to detain A.H., now at SMH, pursuant to s. 59(2)(e) of the AGA as an emergency measure that was deemed necessary to protect her from harm. She remained there in a secure ward for nearly eight months ...

In addition to *A.H.,* similar issues arose in a complaint to the Ombudsperson in 2015,[231] and in an inquest into the death of David Edwin Fast.[232] In the verdict from the inquest, the Coroner noted that Mr. Fast had experienced a sequence of detention, and the criminal justice system. The Coroner recommended that guidelines and education on the application of the AGA and the MHA be provided to all health practitioners whose responsibilities involve the care of vulnerable adults. It is unclear if this training has been provided to all health practitioners who care for vulnerable adults.

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[231] Dirk Meissner, "B.C. health authority apologizes for 'detaining' woman for 2 years", *The Canadian Press*, 5 May 2015, https://ottawa.citynews.ca/2015/05/07/b-c-health-authority-apologizes-for-detaining-woman-for-over-two-years/.

[232] Verdict at Inquest into the death of David Edwin Fast, June 27, 2014. https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/inquest/2014/fast-david-edwin-2013-0376-0134-verdict.pdf.

As noted during the Commissioner's community engagement sessions:

> ***"I think these interfaces are really important.... If the person reaches out for legal advice ... the person trying to give advice doesn't know and may not have enough information to confidently say why this person is here ... that's a real problem and it does shift ... even if they can figure out why they're being held one day it could be different tomorrow and the next day, and that's a really challenging thing to rely upon, and one is really left with the impression that it's ... we're just gonna detain and then try to see if we can find some way to justify it, whether it's the Mental Health Act, whether it's Adult Guardianship Act, whether it's the Health Care (Consent) and Care Facility (Admission) Act ... and that's not really consistent with a rights-based approach and to ensuring, that people's basic rights are protected."***[233]

Criteria to detain

In order for an adult to be detained under s. 59(2), as noted above, in addition to the designated agency believing that it is necessary to act without delay to prevent serious harm including death, the adult must also be "apparently abused or neglected" and "apparently incapable of giving or refusing consent". Both of these pre-conditions for emergency detention rely on the undefined term "apparently". Designated agency representatives suggested in interviews that they consider that there is "apparent abuse and neglect" when the circumstances of the adult appear to meet the definitions of "abuse", "neglect" and "self-neglect" in the AGA.[234] The existence of actual abuse, neglect or self-neglect does not have to be proven for action to be taken, given the emergency conditions under which s. 59(2) is invoked. "Apparently incapable" is not defined and does not necessarily entail an assessment of actual capacity.

The assessment of apparent incapability is done by designated agency staff. Some designated agencies do not have staff trained in assessing capacity,[235] and in others, any staff (regardless of training) responding to a report of abuse or neglect may determine whether an adult is "apparently incapable".[236]

The legislative authority to act under s. 59 only permits action in time limited, urgent circumstances where an assessment is not possible to perform because failure to act immediately would result in serious harm to the adult. While the low standards of "apparently incapable" and "apparently abused or neglected" may be necessary to move quickly to prevent death or serious bodily harm in an emergency, as discussed on pages 89–92, current detention practices often go beyond the time that could be reasonably be needed to address the immediate emergency

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[233] BCOHRC's community engagement, February 8, 2024.
[234] BCOHRC interview with IHA, November 1, 2024.
[235] BCOHRC interview with CLBC, October 3, 2024.
[236] BCOHRC interview with NHA, October 3, 2024.

conditions, in accordance with any plain language reading of the parameters of s. 59. Since, the 2018 to 2023 data indicates that about 96 per cent of detentions are more than three days and 69 per cent are more than five days, there should provide sufficient time to conduct an actual capacity assessment and initiate an investigation of abuse or neglect. Failure to do so when restrictions are placed on adults' liberty shows a lack of respect for capable adults' autonomy to accept or refuse support, assistance or protection as long as they do not harm others. This practice is therefore inconsistent with the AGA's guiding principles and its section on presumption of capability (s. 3),[237] and risks designated agencies detaining adults who are capable of refusing consent, which is not authorized by the legislation.

Between January 1, 2018 and December 31, 2023, the PGT received 17 requests for assessments from designated agencies planning on applying for a support and assistance order. In 13 of these cases, an assessment was conducted.

In interviews with the Commissioner, some designated agency representatives suggested that determining capacity for an adult may be unnecessarily intrusive and not trauma informed because capacity is presumed.[238] However, where the adult is kept in detention, expresses the wish to leave and is not permitted to do so, there is already a judgment being made about their capacity that is contrary to the presumption that the adult is capable. A capacity assessment is therefore an important safeguard to ensure that capable adults' wishes are being respected.

Finding 4: The designated agencies who are detaining adults are doing so without legal authority

As noted above, whether, to what extent and for how long detention is authorized under s. 59 of the AGA is unclear. But there is no doubt that detention is a significant interference with liberty and human rights, and requires clarity and safeguards in the law.[239]

Detentions under s. 59 contain no such clarity and safeguards. We have described that there is no other statute in Canada that authorizes a detention without using language like detain, detention or involuntary admission, without specifying a detention period/length and without providing for some review process or judicial oversight. These protections are necessary to prevent the AGA from creating broad and unpredictable powers to detain adults. It cannot be concluded that the Legislature intended for the AGA to create such powers since such an interpretation would undercut the purposes of the AGA, undermine the AGA's provision that a support and assistance order authorizing detention must be both time limited and renewable only once[240] and violate adults' fundamental human rights. The only reasonable interpretation is that any detentions permitted by the AGA must be limited to the time needed to address emergency conditions and that court orders must be sought in haste to authorize any further detention. While not every detention described in this Inquiry's data is necessarily contrary to law, significant concerns around illegality are raised.

[237] AGA, ss. 2, 3.
[238] BCOHRC interview with VCHA, November 1, 2024.
[239] UN Human Rights Committee (HRC), *General comment no. 35 on Article 9*, para. 14.
[240] AGA, ss. 57(4)(2), 57(5).

Inconsistent and improper reliance on purposes enumerated in subsections of s. 59(2)

The Commissioner asked the designated agencies to specify the subsections of s. 59(2) they relied on for every instance when an adult was detained under s. 59(2).

The most commonly reported subsection used was s. 59(2)(e) which permits designated agencies to take "other emergency measures" (67.6 per cent, 230 detentions). The least commonly reported subsection was 59(2)(d) (5.3 per cent, 18 detentions) which permits designated agencies to inform the Public Guardian and Trustee that an adult's financial affairs need immediate protection.

As discussed on page 48, designated agencies rarely rely on one subsection of s. 59(2) on its own.

The evidence shows a lack of understanding among the designated agencies of the authority to detain adults under s. 59 of the AGA including improper reliance on subsections of s. 59(2) to detain adults.

First, the designated agencies do not appear to have a clear understanding of the various subsections of s. 59 of the AGA and what each authorizes them to do. For example, detentions were stated to be authorized under s. 59(2)(e) in 67.6 per cent (229) of detentions and yet this section was not cited in all cases where adults were detained. While we don't know whether, in an emergency, the AGA authorizes a brief period of detention under s. 59(2)(e), we do know that section 59(2)(e) of the AGA does not provide designated agencies with authority to detain adults on an indefinite or long-term basis, or any longer than is required to make a prompt application for a court order when emergency assistance is provided.[241]

In addition, while subsection 59(2)(d) was used in 5.3 per cent of the detentions reported by designated agencies (18 detentions), that section speaks only to informing the PGT "that the adult's financial affairs need immediate protection" and it is therefore impossible to see how it could be relied upon to authorize detention.

In addition to reliance on subsections of s. 59(2), the Commissioner is concerned to find that the designated agency policies that post-date the *A.H.* case are instructing staff that a person can be detained for the purposes of care planning,[242] prevention of future risk,[243] or to avoid discharging them to a place with known and unmitigated safety concerns.[244] The designated agency representatives confirmed in interviews that individuals are kept for these purposes.[245] None of these circumstances amount to an emergency on their own, and therefore detentions for these purposes are contrary to law.

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[241] *A.H. v. Fraser Health Authority,* paras. 99, 125-127.
[242] IHA, *General Interprofessional Practices, Adult Guardianship Act, Emergency Assistance*, October 2020, 5, 4.10.
[243] CLBC, *Adult Guardianship Procedures and Practice Guide*, 2022, 21, 8.2.
[244] FHA, *Decision Support Tool Adult Protection – Providing Emergency Assistance to Vulnerable Adults in Accordance with Section 59 of the Adult Guardianship Act (AGA)*, April 2023, 3.
[245] BCOHRC interview with PHCS, October 31, 2024.

Case Study – Michael and Jennifer's story

The Commissioner interviewed family members of adults who were detained under the AGA as part of the Inquiry to ground the Inquiry in the experiences of those who have experienced loved ones being detained under the AGA. The Commissioner is extremely grateful to those individuals who took the time to share their stories and experiences with us. Their insights informed our thinking throughout the work of this Inquiry.

Rather than including the stories as they were shared, the Commissioner has made the difficult decision to change the facts of their stories into composites or hypotheticals. The Commissioner made this decision to protect the identity and personal information of all the people involved, including the detainees, and to ensure fairness given that we did not have the opportunity to fully investigate each case nor did the designated agencies have a fulsome opportunity to respond to them.

These composites are based on the experiences and perspectives of the family members who spoke with us. The quotes in the story are the family members' words.

Jennifer and Michael have been married for decades. Michael is Jennifer's representative under a Representation Agreement. Jennifer's wishes are to age in place and to not live in a long-term care facility. Designated agency staff involved with Michael and Jennifer believed that Michael was putting Jennifer at risk. One day police and social workers came to their home and apprehended Jennifer. Jennifer and Michael thought the police were at the wrong house.

Shortly after, Micheal found out that Jennifer was detained under the AGA in a hospital. Michael, as Jennifer's representative, did not consent to Jennifer's admission to hospital but the health authority did not follow his direction. Micheal did not recall receiving any information about their rights or recourse. The designated agency never provided them with written reasons for the detention or with evidence to support their concerns. "I don't know what to do.... We don't have any rights and we don't have any direction for our future. What the hell am I supposed to do now?" Jennifer wanted to go home and Michael hired a lawyer to help them which cost them over $100,000. "I didn't realize she was going to be taken for almost three years." After being in the hospital with severe restrictions for over a month, the designated agency presented Jennifer and Michael with a support and assistance plan which included Michael agreeing that he was putting his wife at risk and Jennifer agreeing to live in a long-term care facility with restrictions. They did not agree to the plan.

After they refused to sign the support and assistance plan, the designated agency arranged for an assessment of Jennifer's capacity to refuse to accept the plan–which ultimately determined that she did not have capacity. The designated agency then applied to court for a Support and Assistance Plan order which would require Jennifer to live in long-term care. The court issued an interim order requiring Jennifer to remain in the hospital where she stayed until she was transferred to a long-term care facility six months after first being detained. Michael described experiencing restrictions on everything at the long-term care home including on his visitation time, his ability to bring in food and his ability to go outside with Jennifer.

He struggled through tears to describe the impact the AGA has had on them. "Unbelievably hard. The worst thing that could possibly have happened — for both of us — emotionally — physically … I just don't feel right.... I go to our house — empty house every night and … I just hate it. Jennifer should be there. It's cruel. We could have resolved this — in a half an hour — had we had a conversation before Jennifer was apprehended." Michael wondered, "How many people are facing the same thing and haven't said anything?"

Detentions beyond the time necessary to address the emergency

During the Inquiry, the Commissioner learned that many designated agencies (including CLBC, FHA, IHA, PHC, and VCHA) issue Certificates of Emergency Assistance. Most of the designated agencies consider that a Certificate of Emergency Assistance is valid for up to five days and can be renewed repeatedly.[246] This timeframe appears to be based on what designated agencies view as "best" practice.[247] This practice was developed by most designated agencies after a Coroner's report with recommendations into the death of Christine Bessie Fraser.[248]

Designated agencies told the Commissioner that they use the five days to try to work with the adult to develop a plan to address the concerns. The five days is thought to be best practice because, in part, it reflects the practical realities that the use of s. 59 sometimes occurs over a weekend, when people with the relevant expertise may not be around to assist. Designated agencies also indicated that the certificate may be renewed due to a variety of factors, such as a continuous fluctuation in the adult's health or an inability to engage with the adult in conversation because of their health status.

The Commissioner analyzed the data to determine the number of detentions that were for exactly five, 10 and 15 days and found:

- 19.1 per cent of detentions (65 detentions) were for exactly five days
- 2.9 per cent of detentions (10 detentions) were for exactly 10 days
- 2.9 per cent of detentions (10 detentions) were for exactly 15 days

This data suggests a pattern of issuing "certificates" for five days and then renewing the certificates for subsequent periods of five days. In addition, while the certificate is stated to be valid for five days, there do not appear to be any procedures for a meaningful review of the necessity for a detention after these five days and the designated agencies all (except NHA) appear to have a practice of making repeated decisions to continue detention.

Notably, as described on page 42, there is no authority under the AGA to detain automatically for a period of five days. Indeed, the AGA does not authorize the designated agencies to keep the adult beyond the time necessary to resolve the emergency or apply to court for a support and assistance order. As noted earlier, in *A.H.*, the court found that "s. 59(2)(e) does not confer authority on designated agencies to detain adults on an indefinite or long term basis,"[249] and that any authority to detain is limited to emergencies only, where "it is necessary to act without delay in order to preserve the adult's life, prevent serious physical or mental harm to the adult, or protect the adult's property from significant damage or loss." Where actions that are not necessary to respond

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[246] BCOHRC interviews with VIHA, September 26, 2024; CLBC, October 3, 2024; PHCS, October 31, 2024; IHA, November 1, 2024; VCHA, November 1, 2024; FHA, October 30, 2024.
[247] FHA, *Decision Support Tool Adult Protection – Providing Emergency Assistance to Vulnerable Adults in Accordance with Section 59 of the Adult Guardianship Act (AGA)*, April 2023, 4; IHA, *General Interprofessional Practices, Adult Guardianship Act, Emergency Assistance*, October 2020, 2, sections 4.1, 4.4, 4, section 4.7.1, 5, section 4.10; CLBC, *Adult Guardianship Policy, Number SE4.012*, 2022, 2; CLBC, *Rights Advice, More Information.*
[248] BCOHRC interview with VCHA, November 1, 2024; Coroner's Verdict at Inquest into the death of Christine Bessie Fraser, BCCS 2007-0278-0285.
[249] *A.H. v Fraser Health Authority*, para. 99.

to an emergency resulted in a lengthy detention, the Court in *A.H.* found them to be a "flagrant overstepping"[250] of the authority granted by the AGA.

Even if not all safety concerns are resolved, if an emergency is over, there is no authority to detain. Moreover, as the Court found in *A.H.:*

> "[Section] 59 was intended to bridge the gap, in an emergency, and in circumstances where a designated agency cannot obtain a court order quickly enough to preserve an individual's life or prevent imminent harm. The objective of imposing involuntary measures only as a last resort, in a manner as minimally intrusive as possible, and by court order, would be substantially undermined by a construction of s. 59(2)(e) that permitted agencies to indefinitely detain vulnerable adults, without judicial oversight, in order to compel provision of services.
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> [It] is very clear is that the specific authority provided to designated agencies in the AGA to seek support and assistance orders renders it unnecessary for any agency to detain anyone beyond the time reasonably required to apply for such an order."[251]

Similarly, sections 59(2)(a) and (b) either alone or together cannot be understood on a plain reading as authorizing detentions days beyond the hours necessary to enter a premises, use reasonable force and/or convey an adult to a safe place. The plain meaning of the word "convey" in s. 59(2)(b) suggests only the time needed to transport an individual to a safe place, not the authority to keep them there. In the Commissioner's view, any detentions on the basis of these subsections either together or alone, beyond a matter of hours are based on an incorrect application of a plain reading of the statute. Despite this, however, the four detentions reported that relied exclusively on subsections 59(2)(a) and (b) lasted for period of 56, 11, six and five days.[252]

Failure to seek support and assistance court orders

> ***"What ends up happening in practice is people are held under emergency provisions but they have no control over the pace that would lead to a proper assessment of the interventions … while there is a process to do a more rigorous assessment, there's no way to trigger it … so you get these unreviewed detentions that are spanning weeks, months and that's just not appropriate."[253]***

Between 2018 and September 2023, designated agencies only sought court orders to authorize ongoing detentions in three out of the 340 detentions and only obtained one order in these cases. The adults detained in these cases were detained for 22 days, 147 days and 42 days before a court order was obtained. In three other instances, applications for court orders were stated to be "pending", but the status is unknown.

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[250] *A.H. v Fraser Health Authority*, para. 127.
[251] *A.H. v Fraser Health Authority*, paras. 108, 125.
[252] Data provided to BCOHRC by VIHA.
[253] Comment from Community Legal Assistance Society during BCOHRC's community engagement, February 8, 2024.

When a designated agency applies to the court to impose a support and assistance plan, they must first obtain an incapability assessment through the Public Guardian and Trustee to demonstrate that the adult is "incapable of deciding not to accept the services proposed in the support and assistance plan". As discussed above, designated agencies have only requested formal assessments of an adult's capability, a requirement for a court ordered support and assistance plan, 17 times between 2018 and 2023. The PGT arranged for 13 assessments during this time. The PGT informed the Commissioner that 13 of the assessment requests were received after the court's decision in *A.H.* in February 2019. Of those 13 requests, nine assessments were conducted. To apply to court for a support and assistance order, designated agencies also need to provide notice of the application to the adult and others. Designated agencies must also serve a copy of the application to the PGT (s. 54(2)(d) of the AGA). In response to the Commissioner's request for data, the PGT indicated that she was served such applications six times between January 1, 2018 to September 30, 2023: once each from CLBC, VIHA and VCHA and three times by FHA.[254] One designated agency reported that obtaining a support and assistance court takes more than a month, at minimum.[255] Designated agencies also told the Commissioner that they experienced delays getting into court during the COVID-19 pandemic. This lack of court applications may have to do with many of the designated agency policies that affirm that the law requires that court is a "last resort".[256] Designated agency representatives confirmed with Commissioner staff during interviews that they view going to court as a last resort. One designated agency representative expressed the opinion that going to court is not consistent with the AGA's guiding principles of least restrictive and intrusive support and that court is not trauma informed.[257] Another designated agency representative said, "I'm very proud of the fact that we've never had to go to court and we've always found less intrusive options available" and that they would consider court "in situations where there is no clear way as to when the s. 59 can end."[258]

As described above at page 35 and 67, most designated agencies are able to resolve reports of abuse, neglect and self-neglect without using s. 59 and therefore do not need to go to court. While that is appropriate, considering going to court to review or authorize detention is a last resort is a misreading of the guiding principles of the AGA. The guiding principles require that all adults should receive the most effective, but the least restrictive and intrusive form of support, assistance or protection when they are unable to care for themselves or their financial affairs and that the court should not be asked to appoint, and should not appoint, guardians unless alternatives, such as the provision of support and assistance, have been tried or carefully considered.[259] Asking the court to appoint a guardian is an intrusive step, because it impinges on an adult's autonomy to make their own decisions. On the other hand, where a court is asked to review or authorize detention in a circumstance where the designated agency is already keeping or intends to keep an adult against

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[254] PGT spreadsheet provided in response to the Commissioner's Information Request.
[255] FHA, IHA, PHC, and VCHA response during Commissioner's administrative fairness review.
[256] VCHA, *Responding to Abuse, Neglect or Self-Neglect of Vulnerable Adults: For Designated Responder (DR) and Designated Responder Coordinators (DRCs)*, 1; CLBC, *Adult Guardianship Procedures and Practice Guide*,2022, 6, 3.2; NHA, *The Adult Guardianship Act: Abuse, Neglect, Self-Neglect &The Question of Incapacity*,2024, 10; IHA, *General Interprofessional Practices, Adult Guardianship Act, Emergency Assistance*, October 2020, 2, 4.2; IHA, *Policy AL0800 – Adult Guardianship Act (Part 3) Designated Agency Policy*, 14 December 2022, 3, 3.0.
[257] BCOHRC interview with VCHA, November 1, 2024.
[258] BCOHRC interview with IHA, November 1, 2024.
[259] AGA, ss. 2(b) and 2(c).

their will, the court plays a different role. In that situation, the court provides objective oversight to ensure that a factual and legal basis for the detention exists and that a neutral third party other than the detainee and designated agency know about the detention. Such regular review is not only not a last resort, it is required by the AGA and international human rights standards.[260]

The Commissioner learned that the government heard other reasons for the lack of court applications may be the lack of timelines for doing so in the AGA, the associated costs and the delay of two- to three-months to get into Provincial court.[261] Although the Commissioner acknowledges it can be difficult to get into Provincial Court for a hearing quickly, a designated agency may apply to have an expedited hearing or make an application for an interim order to deal with detention. While the *Provincial Court (Adult Guardianship) Rules*, B.C. Reg. 30/2001 do not explicitly provide that detention can be addressed on an interim basis, Rule 2 provides that the Court is able to hear applications, including any other application that a party may apply for under Rule 2(7), pending a full hearing in an AGA matter.[262] Such an "other application" could include an application to resolve urgent issues before the full hearing takes place, as is common in many other types of litigation.

There are many examples of laws requiring short time frames to apply for review of detention, indicating the urgency of reviewing all instances of detention. The B.C. Supreme Court summarized these in *A.H.* at para 112:

> [112] A comparative analysis of urgent detention measures in other legislation also supports an interpretation of s. 59(2)(e) that does not permit indefinite, long-term detentions. The absence of explicit authorization for detention in s. 59 of the AGA is in stark contrast to urgent detention measures authorized by other Canadian legislation. When urgent detention is authorized by other legislation, it is an express, time-limited measure that requires some form of timely if not immediate review and authorization for continued detention. For example:
>
> (a) Detention pursuant to the *Mental Health Act* may be authorized for an initial period of 48 hours when a physician completes a Certificate of Involuntary Admission (Form 4): s. 22(1). A second physician must examine the detainee and complete a second Form 4 for detention to continue beyond 48 hours: s. 22(2). Continued detention after the initial 48-hour period is subject to review by a tribunal, the Mental Health Review Board, within 14 days and at regular intervals after that: s. 25, *Mental Health Regulation*, B.C. Reg. 233/99, s. 6.
>
> (b) Medical health officers may apply for an order in Provincial Court requiring an "infected person" to remain in a place or not enter a place if they are determined to be a danger to public health pursuant to the *Public Health Act*, SBC 2008, c. 28, s. 49(1). If a person is detained, an application to continue the detention must be made to a judge of the Provincial Court as soon as reasonably possible, but no later than seven days from the start of the detention: s. 49(7).

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[260] UN Human Rights Committee (HRC), *General comment no. 35 on Article 9,* para. 39.
[261] Records obtained in response to information requests sent to the Ministry of Attorney General and the Ministry of Health.
[262] *Provincial Court (Adult Guardianship) Rules*, Rule 2(7).

(c) A person arrested by or delivered to a peace officer may be detained but must appear before a justice within 24 hours, or where a justice is not available, as soon as possible: *Criminal Code*, R.S.C. 1985, c. C-46, s. 503(1).

(d) The detention of a permanent resident or foreign national by the Canada Border Services Agency must be reviewed by the Immigration and Refugee Board within 48 hours of the detention: *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 57(1). Continued detention after the initial 48-hour period is subject to review within a seven-day period, and once every 30-day period afterwards: s. 57(2).

(e) Section 28(1) of the *Quarantine Act*, S.C. 2005, c. 20, permits a quarantine officer to detain a traveler for various grounds such being in close proximity with a communicable disease or refusing to be disinfected. Under subsection 29(3), a quarantine officer must confirm that continued detention is necessary at least every seven days after the initial detention and on the basis of the most recent medical examination. A traveler has the right to request a review of the confirmation of detention detailing the reasons for the continued detention (s. 29(4)). Such a request must immediately be sent to a review officer (s. 29(5)) and the review officer must conduct a review of the confirmation of detention within 48 hours after receiving the request (s. 29(6)).

Uncertainty of police authority

In their 2015 report, A Case for Change – Support for Fulfilling Designated Agency Responsibilities, the Older Adult Abuse/Neglect Response Action Group noted that:

> ***"Police across B.C. have raised concerns about their ability to assist designated agency staff with conveying an adult to safety, when the 'use of force' is necessary. The role of police is not clearly articulated in legislation or regulation. Similarly, section 59 does not provide police with any authority to assist designated agencies when an adult elopes or is removed from the hospital during an investigation. Precious time is being wasted by the designated agency staff and police in attempts to sort this out on a case-by-case basis."*** [263]

Unlike the *Mental Health Act,* the AGA does not provide police with specific authority to apprehend adults. However, some designated agency policies recommend that designated agency staff responding to adult abuse and neglect get assistance from police, including in apprehending adults to transport them to a safe place and detain them.[264] Designated agencies may also rely on the police to apprehend adults who leave the facility or hospital where they are detained and to

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[263] Older Adult Abuse/Neglect Response Action Group, Subcommittee of the Council to Reduce Elder Abuse (CREA), *A Case for Change*, 10.

[264] VCHA, *Responding to Abuse, Neglect or Self-Neglect of Vulnerable Adults: For Designated Responder (DR) and Designated Responder Coordinators (DRCs)*, Appendix A; IHA, *General Interprofessional Practices, Adult Guardianship Act, Emergency Assistance*, October 2020, 3, 4.6; CLBC, *Adult Guardianship Procedures and Practice Guide*, 2022, 21, 8.2; 29, 10.; 77.

return them to the place of detention.[265] Notably, as described earlier, given the absence of police authority provided for in the AGA, the *Mental Health Act* is sometimes inappropriately used to engage police assistance in these matters.[266]

As described on page 49 and 88, the Commissioner heard during interviews with designated agency representatives that sometimes they request police assistance "to keep the peace."[267] Designated agency representatives told us that in accompanying designated agency staff who are acting under s. 59 of the AGA, police sometimes use restraints and force (for example, forced entry into a home and handcuffing the adult).[268] While police may have common law authority to keep the peace, there is no provision in the AGA for police to assist designated agency staff in these ways.

Records received by the Commissioner indicate that in AGA matters, the extent of police power and the extent and adequacy of police training in the AGA are unresolved issues. The records provided to the Commissioner indicate that some designated agencies may see a potential benefit in the clarification, confirmation and enhancements of the role of the police under the AGA.[269]

Given the overlap in who might be disproportionately detained under s. 59(2) (as noted below in Finding 5) and who might face disproportionate rates of detention and arrest by police more generally,[270] the involvement of police in s. 59(2) detentions risks reinforcing systemic inequities and compounding trauma. The Commissioner recognizes the trauma that some adults have experienced as a result of these police interactions and is concerned that there has not been sufficient consideration of alternative ways to assist vulnerable adults, including available community-based options.

Detentions occurring under "doctor's orders" do not have legal authority

During the Inquiry, the Commissioner learned from some community organizations that some vulnerable adults were being detained pursuant to "doctor's orders" rather than under the AGA. If true, it would mean that doctors are effectively detaining patients without any specific statutory authority and in violation of human rights standards. Article 9(1) of the ICCPR prohibits detention without legal authorization and there is no legal authority for doctors to detain adults in the absence of specific statutory authorization. Therefore, adults who are detained without such authorization are detained unlawfully and miss out any procedural protections that would likely be contained in any authorizing statutes. Given the serious human rights implications of such a practice the Commissioner wrote to the designated agencies and asked questions about use of "doctor's orders" in interviews with designated agency staff.

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[265] BCOHRC interviews with IHA, November 1, 2024; CLBC, October 3, 2024.
[266] *A.H. v. Fraser Health Authority,* paras 31-32.
[267] BCOHRC interviews with CLBC, October 3, 2024; IHA, November 1, 2024; FHA, October 30, 2024; NHA, October 3, 2024.
[268] BCOHRC interviews with IHA, November 1, 2024; FHA, October 30, 2024, and subsequent clarification, November 1, 2024.
[269] Records obtained in response to information requests sent to the Ministry of Attorney General and the Ministry of Health; BCOHRC interview with IHA, November 1, 2024.
[270] British Columbia's Office of the Human Rights Commissioner. *Equity is Safer: Human Rights Considerations for Policing Reform in British Columbia.* British Columbia's Office of the Human Rights Commissioner, 2021, 21. https://bchumanrights.ca/wp-content/uploads/BCOHRC_Nov2021_SCORPA_Equity-is-safer.pdf.

Every health authority wrote to the Commissioner indicating that they did not have or were not aware of a practice of detaining vulnerable adults under "doctor's orders" rather than relying on s. 59 of the AGA. The designated agency representative for VCHA explained that doctors write orders to admit patients and to discharge patients. She said she is not aware of doctor's relying on their own authority to detain adults but that they have developed resources to help physicians understand the legislative frameworks they are operating within.[271] NHA's representative confirmed that they are aware of doctor's orders being used to keep an adult in hospital, although she denied that this was so common as to constitute a practice. However, the Commissioner reviewed a record provided by government that contains some information that indicates that in NHA they often have doctors tell patients and their families that the patient cannot leave under doctor's orders.[272]

In the Commissioner's view, while there is conflicting evidence of whether patients are being detained by "doctor's orders" instead of the AGA, it is worth stating clearly that health care providers cannot detain adults without specific authority provided by a statute. This practice would circumvent all the legislative frameworks, procedural fairness safeguards, and checks and balances on authority established in statutes that authorize detentions.

Finding 5: The disproportionate impact of detention practices on seniors, people who are unhoused and people with disabilities, including people with mental health and substance use issues, results in systemic discrimination

As detailed above under Legal Context, under both international and statutory domestic human rights law, equality means substantive equality. This entails understanding that true equality sometimes means treating different people differently in order to focus on equality of outcome.

In this section, the Commissioner examines who is being detained and concludes that certain communities are disproportionately detained under s. 59 of the AGA. This, of course, is not the end of the substantive equality analysis. Next, we turn to whether this disproportionate impact results in harm for the impacted group, whether that harm is sufficiently connected to prohibited grounds of discrimination and whether there is any justification for the disproportionate impact. The Commissioner concludes that the current approach to detention under s. 59(2) of the AGA is discriminatory because the harms of detention—including the fact that many adults are being detained beyond the scope of the legal authority granted by the AGA and without due regard to their procedural rights—are disproportionately experienced by seniors, people who are unhoused and people with disabilities.

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[271] BCOHRC interview with VCHA, November 1, 2024.
[272] Records obtained in response to information requests sent to the Ministry of Attorney General and the Ministry of Health.

For the sake of clarity, the Commissioner is not concluding that *any and every* detention of vulnerable adults who are apparently abused or neglected is necessarily discriminatory, but that the current system and practices for detention do result in inequality.

Data on who is detained

The Commissioner requested data from the designated agencies on the demographics of the adults detained under s. 59 including age, gender/gender identity, race, disability including whether they have mental health or substance use issues, and whether they are victim-survivors of gender-based violence (GBV). The Commissioner also requested data on the place the adult was living when they were detained including whether they were homeless or living in a shelter.

In her report Disaggregated Demographic Data Collection in British Columbia: The Grandmother Perspective, the Commissioner explains this kind of disaggregated demographic data "can reveal inequalities and relationships between categories." By making visible the impacts of systemic racism, sexism and other forms of intersectional oppression, disaggregated data can inform systemic change.[273] However, as noted in The Grandmother Perspective report, disaggregating data can also cause harm.[274] To mitigate the potential for harm, the report outlines a process or framework for disaggregated data collection. In order to avoid causing harm with the demographic analysis undertaken for this report, the Commissioner sought direction from community organizations serving and directly involved with people who have been detained under s. 59 of the *Adult Guardianship Act* on the use of data.

With respect to adults who receive emergency assistance or interventions under the *Adult Guardianship Act,* the designated agencies collect data on age, gender, disability and mental health or substance use issues but many do not report race/ethnicity, Indigeneity, or other demographic characteristics like social condition or poverty.

With respect to age,

- Seven in 10 adults (69.7 per cent, 209 out of 300) were reported to be seniors (65 years or older),
  - 43.0 per cent (129 out of 300) were reported to be 75 years or older and
  - 17.0 per cent (51 out of 300) were reported to be 85 years or older.
- 10 out of 300 individuals were reported to be young adults (19-24 years)
  - nine out of these 10 detained young adults were reported by CLBC, which, notably, provides services to adults with developmental disabilities, autism spectrum disorder and fetal alcohol spectrum disorder. The other one was reported by FHA.

[273] British Columbia's Office of the Human Rights Commissioner, *Disaggregated demographic data collection in British Columbia: The grandmother perspective*, September 2020, 8, https://bchumanrights.ca/resources/publications/publication/datacollection/.
[274] *The grandmother perspective*, 8-12.

With respect to sex and gender,

- Of the 300 people detained, slightly more than half (51.3 per cent, 154 individuals) were reported to be female.
- Six individuals were reported to have experienced gender-based violence, which could be underreported in the absence of a shared definition of gender-based violence.
- Among the 10 detained young adults, 70.0 per cent (seven out of 10) were reported to be female, compared to 49.1 per cent among the young adult population in B.C.
- Among 209 detained seniors, 55.5 per cent (116 out of 209) were reported to be female, compared to 53.3 per cent among the senior population in B.C.

With respect to race, the data is insufficient to draw any conclusions. The race of the adults who were detained was only provided for 11 of the 300 (3.7 per cent) individuals detained. These detentions were tracked only by VIHA and CLBC. Among the 11 individuals, six were reported to be white and five were reported to be Indigenous (45.5 per cent). Given the limited amount of race-based data collected by the designated agencies, we can't say if there are disproportionate impacts on Indigenous and other racialized individuals.

In contrast, the data on disability shows a significantly disproportionate impact.

The vast majority of adults detained by the designated agencies are reported to have a disability (93.7 per cent, 281 adults). Overall, more than half of the individuals detained (59.0 per cent, 177 individuals) were reported to have mental health or substance use issues.

Fraser Health Authority, Vancouver Coastal Health Authority and Providence Health Care provided further breakdowns on their disability data. Among 241 individuals detained by these designated agencies:

- most of the individuals (95.9 per cent, 231 individuals) were reported to have at least one type of disability.
  - 92.5 per cent (223 individuals) were reported to have cognitive disability,
  - 44.8 per cent (108 individuals) were reported to have physical disability,
  - 5.4 per cent (13 individuals) were reported to have development disability.
- 56.4 per cent (136 individuals) were reported to have either mental health or substance use disorders.

The Commissioner also asked the designated agencies for data related to the place the adult was living at the time they were detained. Between 2018 and September 30, 2023, 47 individuals or approximately 14 per cent of people detained under the AGA were unhoused or living in shelters at the time of their detention (42 unhoused persons were detained by the health authorities and five by CLBC).

The Commissioner finds no evidence of overrepresentation of women or of people experiencing gender-based violence.

It is noteworthy that the data on gender provided to the Commissioner is binary, meaning that each adult was recorded as being either male or female. Most of the designated agencies do not appear to collect data on an adult's gender identity including whether they identify as cisgender or transgender, a Two Spirit or non-binary person, a man, a woman or otherwise. VCHA told the Commissioner that the Re:Act Reporting System under gender/gender identity includes the following options: female, male, transgender, undetermined or other, unknown. However, none of the adults that were detained by VCHA under s. 59 identified outside of the categories of male and female.

The Commissioner heard anecdotally that women and gender diverse people experiencing gender-based violence may be disproportionately impacted by AGA detentions and questions. Although this was not borne out by the data, the numbers may be underreported given the absence of an official definition of gender-based violence and the fact that the prevalence of people experiencing GBV in the AGA data is significantly lower than the prevalence of self-reported GBV in the B.C. population from Statistics Canada's survey.

Table 5: Detentions of women and people experiencing gender-based violence

	AMONG 300 DETAINED ADULTS		AMONG B.C. POPULATION	
Women	154	51.3%	2,263,642[275]	50.8%
People experiencing GBV	6	2.0%	390,000[276]	11.7%

Based on the data below in Table 6, the Commissioner finds that detention under the AGA disproportionately impacts seniors, people who are unhoused and people with disabilities, including people with mental health and substance use issues. The data shows that the detention of these populations significantly outpaces their presence in the general population:

[275] Statistics Canada, *Annual Demographic Estimates*: *Canada, Provinces and Territories 2023*, as a percentage of B.C. population aged 18 years and over, (Ottawa: ON, 2024), https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=1710000501.

[276] Statistics Canada, *Survey of Safety in Public and Private Spaces, Number of people experiencing intimate partner violence in the past 12 months*, as a percentage of the B.C. population aged 18 years and over, (Ottawa, ON: 2018), https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=3510020501.

Table 6: Detentions of people with disabilities, people 65+, people who are unhoused or living in shelters, and people with mental health and substance use issues

	AMONG 300 DETAINED ADULTS		AMONG B.C. POPULATION	
	NUMBER	%	NUMBER	%
People with disabilities	281	93.7%	1,157,610 [277]	28.6%
People aged 65 and over	209	69.7%	1,053,617[278]	23.7%
People who are unhoused or living in shelters	47	15.7%	11,352[279]	0.2%
People with mental health and substance use issues	177	59.0%	1,070,188[280] – 1,260,222[281]	21.4[282]-25.2%[283]

Through her consultations with community organizations who serve people impacted by the AGA, the Commissioner heard that Indigenous people may be disproportionately affected by AGA detention. Given the scarcity of race-based data noted above, it is not possible to conclude whether or not this is the case. However, given the overrepresentation of Indigenous people in two of the other groups disproportionately impacted—namely, people who are unhoused and people with disabilities (per the data in Table 6)—the Commissioner considers that disproportionate impact on Indigenous people is likely and believes more study is required on this issue.

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[277] Statistics Canada. *Canadian Survey on Disability, 2022* as a percentage of B.C. population aged 15 years and over, 2022, (Ottawa, ON: 2023), https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=1310037401.

[278] Statistics Canada, *Annual Demographic Estimates*: *Canada, Provinces and Territories 2022*, as a percentage of B.C. population aged 18 years and over, (Ottawa, ON: 2024), https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=1710000501.

[279] Homelessness Services Association of BC, *2023 Report on Homeless Counts in BC*, as a percentage of B.C. population aged 18 years and over, (BC Housing, 2024), https://www.bchousing.org/sites/default/files/media/documents/2023-BC-Homeless-Counts.pdf.

[280] Estimated statistics using two sources. First, the B.C. population from the 2021 Census. Second, the prevalence of people with mental health and substance use disorder based on Keen et al, *Prevalence of co-occurring mental illness and substance use disorder and association with overdose: a linked data cohort study among residents of British Columbia, Canada*, (2021), https://onlinelibrary.wiley.com/doi/epdf/10.1111/add.15580.

[281] Estimated statistics using two sources. First, the B.C. population from the 2021 Census. Second, the prevalence of people with mental health and substance use disorder based on Canadian Mental Health Association. *Mental Health in British Columbia*, (Toronto, ON: 2024), https://cmha.ca/wp-content/uploads/2024/11/State-of-Mental-Health-profile-BC.pdf.

[282] Keen et al., *Prevalence of co-occurring mental illness and substance use disorder and association with overdose: a linked data cohort study among residents of British Columbia, Canada*, (2021), https://onlinelibrary.wiley.com/doi/epdf/10.1111/add.15580.

[283] Canadian Mental Health Association, *Mental Health in British Columbia*, (Toronto, ON: 2024), 4. https://cmha.ca/wp-content/uploads/2024/11/State-of-Mental-Health-profile-BC.pdf.

Substantive equality analysis

Harm experienced on the basis of prohibited grounds

In summary, the data is clear that seniors, people who are unhoused and people with disabilities, including people with mental health or addiction issues are disproportionately detained and that this differential impact is directly connected to these identity factors (for example, that the detention of a person with a cognitive disability under the AGA is directly connected to their disability). Further, given the disproportionate representation of Indigenous people among the populations of people who have disabilities and people who are unhoused, the differential impact is also experienced on the basis of Indigenous identity.

The AGA's disproportionate impact on persons with disabilities and older persons is unsurprising, given that these are the populations to which the AGA is intended to apply. Similarly, given the high prevalence of disability among Indigenous people and people who are unhoused, disproportionate impact on these communities is also predictable. However, despite the laudable goal of protecting the interests of vulnerable populations, the Commissioner is highly concerned that these populations are subject to detentions that are often contrary to law and undermine human rights in the variety of ways that are documented above, in numbers that far outpace their presence in the population. Detention for the purposes of preserving the adult's life and preventing grievous bodily harm may be a benefit to a vulnerable adult facing serious risks from abuse or neglect in emergency situations; however, it is key to the substantive equality analysis to understand that arbitrary denials of freedom, potentially in secret without disclosure to family, primary supports or legal representatives, without independent oversight and without access to meaningful legal remedies could cause significant and very real harm. This harm is disproportionately visited on people with disabilities, seniors and unhoused people, and very likely on Indigenous people.

In addition, during community engagements for this Inquiry, the Commissioner heard concerns about bias and assumptions about people with intellectual and developmental disabilities resulting in them being disproportionately impacted by AGA detentions. The representative from Inclusion BC noted that "for people with intellectual and developmental disabilities, an added challenge is how there are so many assumptions about their capabilities and a write off of their ability to provide consent or make decisions and most of that is because they are not properly supported to make decisions."[284] In so far as people with disabilities and older people may be detained based on bias about their capacity to consent (see Finding 3) as opposed to evidence, these practices perpetuate their social disadvantage and stigma about disability and age.

The Commissioner is also concerned that, in addition to the above-mentioned individuals being disproportionately represented in AGA detentions, they may also experience unique adverse impacts of detentions because of their individual and intersecting identities. For example, Indigenous, Black and other racialized people face disproportionate rates of police detention, which has historical roots in systemic racism and colonialism.[285] Detention in health facilities under the AGA may trigger trauma responses for those who belong to communities who have disproportionately faced state restrictions on their liberty. In addition, women and gender-diverse

[284] Comment from Inclusion BC at BCOHRC's community engagement, February 8, 2024.
[285] BC's Office of the Human Rights Commissioner. *Equity is Safer*, 24.

people are more likely to have experienced gender-based violence in the past and therefore losing control of their bodily autonomy could trigger trauma.[286]

Insufficient justification for harm perpetuates substantive inequality

As noted above in the Legal Context section, the next step in the test is whether the actions of the designated agencies or government are justified.

There may be important justifications for minimally intrusive and short-term detentions under s. 59(2). For example, a short term detention could be justified in order to convey a person to a safe place or to deal with an immediate threat to life. However, many detentions under the AGA exceed the legal boundaries and the justification pursuant to any plain reading of s. 59 of addressing emergency circumstances, as discussed above, therefore they are not reasonably necessary. As noted above, intent is not necessary for a finding of discrimination, and the intent to protect vulnerable people that may be shared by the Legislature, Ministries, designated agencies and health care staff is not sufficient to insulate detention practices from review. Based on the findings above, detention is occurring regularly and often for periods of time far exceeding the time that could reasonably be required to protect adults from death or serious bodily harm, thereby exceeding any authority created by s. 59(2). In addition, transparency and oversight over detention are lacking and adults' rights to fair process are often disregarded or not adequately respected. These harms are disproportionately experienced by those who are detained; namely, seniors, unhoused people and people with disabilities. Therefore, even where disproportionate detention may be justified, the disproportionate impact of these harms is not. This is a violation of substantive equality.

In addition, the Commissioner finds that delays in reforms to eliminate known discrimination can themselves be discriminatory.[287] In this case, the Province has known since at least 2019 when the *A.H.* case was released that there are significant human rights concerns with the manner in which the AGA is applied. Yet, the government has provided little guidance to the designated agencies and has delayed the reform process several times. The provincial government's failure to take action despite being made aware of serious concerns about detention practices among the designated agencies appears to be at least in part due to a lack of resources being dedicated to this issue at the Ministry level, which is difficult to justify under the high undue hardship standard required under this stage of the human rights analysis. The Commissioner finds that the decision to delay action discriminates against the disproportionately impacted groups enumerated above.

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[286] Statistics Canada, "*Survey on Mental Health and Stressful Events, 2023*" in the Daily, (Ottawa, ON: 27 May 2024), 2, 3, https://www150.statcan.gc.ca/n1/en/daily-quotidien/240527/dq240527b-eng.pdf?st=WEOP-HnU.

[287] *Centrale des syndicats du Québec v. Quebec (Attorney General)*, 2018 SCC 18 (CanLII), https://canlii.ca/t/hrx1q. *Centrale des syndicats du Québec* is a case under s. 15(1), the guarantee of equality in the *Canadian Charter of Rights and Freedoms*. It presents the best illustration of how the effect of delay can be discriminatory, but delay can also violate human rights standards and is regularly considered by human rights tribunals. See for example, *Winter v. Dollar Tree*, 2013 BCHRT 285, paras. 8, 10, https://canlii.ca/t/g245c, *XS v. YP*, 2015 BCHRT 97, para. 20, https://canlii.ca/t/gjxjl; *Rasmussen v. WorkSafe BC and others*, 2014 BCHRT 151, para. 19, https://canlii.ca/t/g84xp; *Chapdelaine v. Air Canada*, 1991 CanLII 553 (CHRT), 23, https://canlii.ca/t/1g8t8; *Lawson v. Workplace Safety and Insurance Board*, 2015 HRTO 850, para. 25 https://canlii.ca/t/gjnk3.

Recommendations for change

Both designated agencies and the provincial government bear responsibility to ensure that the human rights of adults are respected. While the designated agencies conduct the detentions themselves, the provincial government is also responsible because they have the ability to create guidelines, propose revised legislation and create regulations. They also bear responsibility for ensuring compliance with international law.

To address these human rights violations, the Commissioner recommends:

I recommend that government and designated agencies take the following steps to ensure that the *Adult Guardianship Act* (AGA) and all detention practices under it are brought into compliance with international human rights law standards.

Recommendation 1

The designated agencies immediately:

- **a.** desist from detaining adults under s. 59(2) of the AGA for longer than is required to address the immediate risk of death or serious harm unless a support and assistance order has been obtained that authorizes the detention; and
- **b.** ensure all adults detained under s. 59(2) promptly receive written reasons for being detained. Written reasons must:
  - **i.** be accessible and trauma informed;
  - **ii.** include all less intrusive options that were explored before deciding to detain the adult;
  - **iii.** include both the factual and legal basis for the detention; and
  - **iv.** include information on how to challenge the detention itself as well as the conditions of the detention.

For clarity, this applies both to adults detained at and after the time of the release of these recommendations.

Recommendation 2

To ensure that adults detained under the *Adult Guardianship Act* have access to counsel, the Commissioner recommends that

- **a.** The Ministry of Attorney General take immediate steps to extend the *Mental Health Act* rights information service to adults detained under the *Adult Guardianship Act* including through the provision of adequate funding, until the following recommendation is implemented.
- **b.** By August 31, 2025, the Ministry of Attorney General ensures that the rights information service described above is extended to provide legal advice (by lawyers) or otherwise ensure that adults have immediate access to legal advice as needed; and
- **c.** By April 30, 2026, the Ministry of Attorney General ensures sufficient funding for full legal representation to all adults who are detained under the *Adult Guardianship Act*.

Recommendation 3

By June 30 2026, the Attorney General, in cooperation with the Ministry of Health, the designated agencies and the Public Guardian and Trustee, as appropriate, and in consultation with people with lived experience, Indigenous Peoples, health care provider representatives and community-based service providers and advocacy groups, introduce amendments to the *Adult Guardianship Act* to clarify whether a detention is allowed in emergency circumstances under s. 59(2) of the AGA, in a manner that is compliant with domestic and international human rights law.

If detention is allowed in emergency circumstances under s. 59(2), the Attorney General should also introduce amendments to:

- **a.** clarify the circumstances in which detention is permitted, and provide clear criteria to identify such circumstances;
- **b.** clarify the length of time for which designated agencies are permitted to detain adults;
- **c.** provide timeframes for the adult or a person on the adult's behalf to seek prompt review by review mechanisms described in more detail in Recommendation 9;
- **d.** require training for all health and service providers before they can exercise authority under s. 59(2); and
- **e.** create an independent officer of the Legislature, as described in more detail in Recommendation 10.

Recommendation 4

To promote consistent exercise of the authority under s. 59 of the AGA, by December 30, 2026 or sooner, the Ministry of Health in cooperation with the Attorney General, the designated agencies and the Public Guardian and Trustee, as appropriate, and in consultation with people with lived experience, Indigenous Peoples, health care provider representatives and community-based service providers and advocacy organizations, develop provincial regulations, policies or guidelines to support implementation of the legislative changes described in Recommendation 3 including, but not limited to standards for:

- **a.** ensuring that detentions under s. 59(2) are a last resort to protect adults from those who abuse or neglect them and from self-neglect, including by providing appropriate services in community and by ensuring that designated agency staff report abuse to appropriate authorities, pursuant to their statutory obligations;
- **b.** establishing qualifications for staff who are involved in responding to reports of abuse and neglect under Part 3 of the AGA;
- **c.** determining how to apply criteria under s. 59(1), including assessing apparent abuse, neglect or self-neglect under s. 59(1)(a), determining whether it is necessary to act without delay to preserve the adult's life, prevent serious physical or mental harm or to protect the adult's property from significant damage under s. 59(1)(b), and determining whether the adult is apparently incapable of giving or refusing consent to support and assistance under s. 59(1)(c);
- **d.** requiring prompt rights information, access to counsel and written reasons for detention;
- **e.** determining when to provide rights advice to adults subject to actions short of or prior to detention under Part 3 of the AGA;
- **f.** ensuring there is sufficient guidance for designated agencies applying for interim orders and support and assistance orders under s. 56 of the AGA and for adults to respond to applications for support and assistance orders;
- **g.** establishing the processes and timelines for applying to court for support and assistance orders;
- **h.** ensuring that an adult's support persons and legal representative are immediately informed of their detentions and of the adult's whereabouts. Guidelines must ensure that adults are asked for consent to notify a support person of their detention, whereas a legal representative is entitled to this information. The only exception to this requirement is where the representative is perceived to pose a safety risk to the adult; and
- **i.** ensuring prompt and full disclosure to detained adults and to counsel who are representing AGA detainees.

Recommendation 5

By June 30, 2026, the Ministry of Health must, in consultation with the designated agencies:

a. make data reporting mandatory and develop standards for uniform data collection including how many adults are detained under s. 59(2) of the AGA, the length of detention, the mechanism for release or continued detention via court order, and the disaggregated demographic data of those detained;

b. ensure that beginning by April 30, 2027, either the Ministry of Health or the independent officer of the Legislature created under Recommendation 10 publish the data annually.

The process of making demographic data collection and disclosure mandatory must include the Attorney General taking steps to ensure that the *Anti-Racism Data Act* applies to the designated agencies.

For the sake of clarity, the required data must be anonymized and aggregated to ensure transparency and allow for oversight without compromising adults' privacy rights. Data concerning Indigenous adults must be collected, used, stored and disclosed in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, OCAP® principles[288] and the Commissioner's Disaggregated Demographic Data Collection in British Columbia: The Grandmother Perspective recommendations, and should be governed by the same principles as *Anti-Racism Data Act*, although the data must extend beyond race-based data.

[288] OCAP® is a registered trademark of the First Nations Information Governance Centre (FNIGC). https://fnigc.ca/ocap-training/

Recommendation 6

The Ministry of Health in cooperation with the Attorney General, the designated agencies and the Public Guardian and Trustee, as appropriate, consult with people with lived experience, Indigenous Peoples, health care provider representatives and community-based service providers and advocacy organizations, professional associations and subject matter experts to develop mandatory provincial training for all those who exercise decision making authority under Part 3 of the *Adult Guardianship Act*, including but not limited to the health and service providers who exercise authority under s. 59(2).

Training should build on training already developed, be appropriate to the role of the service provider and must include:

- **a.** information that makes it clear that any time an adult is kept in hospital against their will or without substitute consent, it must be pursuant to statutory or judicial authority;
- **b.** statutory frameworks for detentions in health care facilities (under the *Adult Guardianship Act*, if any, and *Mental Health Act*);
- **c.** statutory frameworks for substitute decision making (*Power of Attorney Act*, *Representation Agreement Act*, *Public Guardian and Trustee Act, Health Care (Consent) and Care Facility (Admission) Act*, *Patients Property Act*, AGA); and
- **d.** compliance with all standards, policies and guidelines developed pursuant to Recommendation 4 as well as the importance and mechanisms to provide access to counsel.

Training to be developed by June 30, 2026 and rolled out to service providers in 2026.

Recommendation 7

By December 30, 2026 or sooner, the Ministry of Health in cooperation with the Attorney General, the designated agencies and the Public Guardian and Trustee, as appropriate, consult with people with lived experience, Indigenous Peoples, the Ministry of Public Safety and Solicitor General, police agencies, the health care provider representatives, and community-based service providers and advocacy organizations about the role of the police related to Part 3 of the *Adult Guardianship Act*, and take steps to clarify and/or reform the law and/or policy based on the outcomes of the consultation.

Recommendation 8

The Ministry of Health in collaboration with the designated agencies assess which community-based resources are required to reduce the number and length of detentions of adults under s. 59(2). Community-based resources are publicly-funded health services other than acute care services, including respite care, home support, assisted living, residential care, staffed residential resources and community based mental health supports among others. Once determined, these services must be adequately funded to ensure that detention is only used as a last resort.

The process for determining whether and to what extent under-resourcing of community-based services leads to more or longer detentions must be developed by September 30, 2025 and the assessment process must be completed annually. Results are to be publicly reported on an annual basis, starting by April 30, 2027.

Recommendation 9

By December 30, 2026, the Attorney General introduce legislation or legislative amendments to create an independent review mechanism with jurisdiction over aspects of AGA detentions including legality, conditions, length and involuntary treatment. This review mechanism could be established in the Provincial Court or a new or existing Tribunal.

Recommendation 10

By April 30, 2028, the Attorney General, in cooperation with the Ministry of Health, the designated agencies, the Public Guardian and Trustee, as appropriate, and in consultation with the Ombudsperson, people with lived experience, Indigenous Peoples, health care provider representatives and community-based service providers and advocacy groups, introduce new or amended legislation to create an independent officer of the Legislature to provide oversight over all detentions in health care facilities and provision of involuntary health care, including detentions and care provided pursuant to the AGA and other legislation that authorizes such actions. This office must have the ability to provide advocacy services, engage in public education, initiate systemic investigations and to report publicly and directly to the Legislature, similar to the mandate of the Representative of Children and Youth. The office must have the powers to compel information and enter and inspect facilities. The rights advice service could be offered by the independent office.

The office must operate in a manner that is compliant with the UN Declaration on the Rights of Indigenous Peoples and its mandate must extend to promoting compliance with international human rights law. The Attorney General must report to the Commissioner every six months starting in October 30, 2026 on progress made in establishing the office. The office is to be operational by December 31, 2028.

TIMEFRAME	RECOMMENDATION	#
Immediately	Designated agencies desist from detaining for longer than is required in emergency and provide written reasons	R1
Immediately	Ministry of Attorney General takes steps to extend rights information services to AGA detainees	R2(a)
Aug. 31, 2025	Ministry of Attorney General extend rights advice service to include legal representation or another mechanism	R2(b)
Sept. 30, 2025	Ministry of Health develop data collection standards and make reporting mandatory	R5(a)
Sept. 30, 2025	Ministry of Health develop process for assessing which resources are required to reduce number and length of detentions	R8
Jun. 30, 2026	Ministry of Attorney General introduce legislation amendments	R3
Jun. 30, 2026	The Ministry of Health develop mandatory provincial training for all those who exercise decision making authority under Part 3 of the Adult Guardianship Act. Training to be rolled out throughout 2026.	R6
Dec. 30, 2026 or sooner	Ministry of Health in cooperation with MAG develop provincial regulations, policies, or guidelines	R4
Dec. 30, 2026	Ministry of Health consult about role of police	R7
Apr. 30, 2027	Ministry of Health ensure s. 59 data is published annually beginning this date	R5
Apr. 30, 2027	Ministry of Attorney General ensure sufficient funding for legal representation	R2(c)
Apr. 30, 2027	Ministry of Health publicly report on results of assessment	R8
Apr. 30, 2027	Ministry of Attorney General introduce legislation or amendments to create mechanism to review detentions	R9
Apr. 30, 2027	Ministry of Attorney General introduce legislation amendments to create independent oversight	R10
September 2027	New oversight office operational	R10

Appendix: AGA data analysis by designated agency

Community Living BC

CLBC detained adults 26 times between 2018 and 2023 (18 distinct adults were detained in this time period). Many adults were detained in hospital for urgent medical care. 50 per cent of the adults detained by CLBC were young adults between 19 and 24; 56 per cent male and 44 per cent female.

Almost all of detentions were for five days or more. Six out of 26 cases lasted over 30 days with two lengthy detentions of 74 and 76 days. Although CLBC doesn't operate hospitals, most adults were detained in hospital but, in the case of the lengthy detentions, both adults were detained in staffed resources to prevent adults from engaging in serious self-harming behaviour while CLBC pursued court orders. The Commissioner notes inconsistency in the authority relied on by CLBC to detain an adult in hospital–sometimes relying on s. 59(2)(e) and other times relying on s. 59(2)(c).

Nearly 70 per cent of cases by CLBC were for apparent self-neglect and nearly 70 per cent of people detained were considered to have a mental illness. Only 54 per cent of cases by CLBC were recorded as having a developmental disability.

In 21 cases CLBC has a record of providing oral rights notification to detained adults. However, CLBC only provided adults with written rights notification in three cases (11 per cent).

Number of detentions by year

YEAR	2018	2019	2020	2021	2022	2023	TOTAL
# of detentions	1	1	6	9	5	4	**26**

Length of detentions

LENGTH OF DETENTIONS	# OF DETENTIONS
0-5 days	5
6-10 days	10
11-30 days	5
31-60 days	4
61-90 days	2
More than 90 days	0
TOTAL	**26**

Demographics of people detained

AGE	19-24	25-65	65-74	75-84	85+
detained individuals	9	8	0	1	0

GENDER	FEMALE	MALE	OTHER
# detained	8	10	0
% detained	44.4%	55.56%	0

Reasons for providing emergency assistance

SUBSECTION RELIED ON	59(2)(A)	59(2)(B)	59(2)(C)	59(2)(D)	59(2)(E)
#	2	12	18	0	16

REASON	# DETENTIONS
Apparent abuse	2
Apparent neglect	5
Apparent self-neglect	18

REASON FOR NOT BEING ABLE TO SEEK SUPPORT OR ASSISTANCE	# DETENTIONS	% DETENTIONS
Dementia / cognitive impairment	8	30.8%
Acquired brain injury	0	0.0%
Development disability	14	53.8%
Frailty / injury due to advanced age / illness / condition	1	3.8%
Alcohol / drug impairment	13	50.0%
Mental illness	18	69.2%
Physical handicap / disability	0	0.0%
Aphasia	0	0.0%
Not clear	3	11.5%

Discharge from detention

TOTAL	26
1) Released from hospital and returned to, or admitted to, staffed resource or home share	13
2) Certified under the MHA	3
4) Subjected to a court ordered support and assistance plan	0
5) Passed away during AGA detention/hospitalization	0
6) Remained in hospital voluntarily	5
7) Discharged to family or friends	1
8) Other (e.g. left hospital against medical advice or move to an incarceration facility)	4

Fraser Health Authority

FHA detained adults 174 times between 2018 and September 2023 (146 distinct adults were detained in this time period). The majority of detentions (169) were in hospital; three adults were detained in long term care and for two adults, "other" was indicated as the place of detention.

The vast majority of the detentions (161 out of total 174 cases) were for at least five days; Almost two in 10 (19 per cent, 33 cases) lasted for five days exactly; the longest detention was 147 days during which time FHA sought a court ordered support and assistance plan.

Slightly more than half of adults detained in FHA are female (51.4 per cent). 71.2 per cent of adults detained were over 65. Almost all the adults detained (94.5 per cent) in FHA were identified as having a disability; 13 per cent were identified as having both mental health and substance use issues; 16.4 per cent were identified as having substance use issues only and a further 15.1 per cent were identified as having mental health issues only.

Apparent self-neglect (75.3 per cent) is by far the most common reason cited for the need for emergency assistance. This is followed by apparent neglect (29.3 per cent) and then apparent abuse (17.8 per cent). Dementia or cognitive impairment (66.1 per cent) is cited most frequently as the reason adults are assumed to be incapable of accepting or refusing support and assistance. This is followed by acquired brain injury (13.2 per cent) and then mental illness (9.8 per cent).

FHA only has a record of providing rights notification to adults in 69.5 per cent of detentions. Even more concerning, FHA only has a record of providing written reasons to adults detained under the AGA in 59.2 per cent of cases. Further, FHA has a record of facilitating access to counsel in 69 per cent of cases.

Many adults in the FHA were discharged home after their period of hospitalization, with informal supports or a support and assistance plan in place. 34.5 per cent (60 cases) were admitted to long-term care with substitute consent and 6.3 per cent (11 cases) were certified under the *Mental Health Act.* FHA sought court ordered support and assistance in only three cases.

Number of detentions by year

YEAR	2018	2019	2020	2021	2022	2023	TOTAL
# of detentions	39	33	34	22	32	14	**174**

Length of detentions

LENGTH OF DETENTIONS	# OF DETENTIONS
0-5 days	46
6-10 days	71
11-30 days	43
31-60 days	8
61-90 days	1
More than 90 days	5
TOTAL	**174**

Demographics of people detained

AGE	19-24	25-64	65-74	75-84	85+
# detained	1	41	47	38	19

GENDER	FEMALE	MALE	OTHER
# detained	75	71	n/a
% detained	51.4%	48.6%	n/a

Reasons for providing emergency assistance

SUBSECTION RELIED ON	59(2)(A)	59(2)(B)	59(2)(C)	59(2)(D)	59(2)(E)
#	35	41	58	11	121

REASON	# DETENTIONS
Apparent abuse	31
Apparent neglect	51
Apparent self-neglect	131

REASON FOR NOT BEING ABLE TO SEEK SUPPORT OR ASSISTANCE	# DETENTIONS	% DETENTIONS
Dementia / cognitive impairment	115	66.1%
Acquired brain injury	23	13.2%
Development disability	0	0
Frailty / injury due to advanced age / illness / condition	0	0
Alcohol / drug impairment	5	2.9%
Mental illness	17	9.8%
Physical handicap / disability	3	1.7%
Aphasia	0	0.0%
Not clear	11	6.3%

Discharge from detention not including adults who were discharged home with informal supports or with support and assistance plans

TOTAL DETENTIONS	174*
1) Certified under the MHA	11
2) Admitted to long-term care with substitute consent	46
3) Subjected to a court ordered support and assistance plan	3
4) Passed away during AGA detention/hospitalization	0

*The sum across all categories is lower than 174 detentions because we have not included data on adults who were discharged home with informal supports or with formal support and assistance plans.

Interior Health Authority

IHA detained adults 39 times (against 37 distinct adults) between 2018 and September 2023. The vast majority (34 cases out of the total of 39 cases) were for at least five days; three cases lasted for five days exactly. Every adult was detained in hospital. Two adults were detained for more than 30 days (one for 36 days and one for 40 days).

Nearly 65 per cent of adults detained in IHA were female.

64.1 per cent of total cases were detained for apparent self-neglect; 23.1 per cent for apparent neglect and 17.9 per cent for apparent abuse. 69.2 per cent were recorded as not being able to seek support and assistance because of dementia/cognitive impairment followed by 20.5 per cent due to frailty or advanced age. IHA most frequently relied on the ss. 59(2)(e) and 59(2)(c) to detain.

IHA has a record of providing oral rights notification to detained adults 76.9 per cent and written rights notification in 69.2 per cent of cases. IHA only has a record of facilitating access to counsel for 35.9 per cent of cases.

Detentions most commonly ended with admissions to long-term care with substitute consent or discharge home with informal supports or after accepting a support and assistance plan.

Number of detentions by year

YEAR	2018	2019	2020	2021	2022	2023	TOTAL
# of detentions	2	3	6	8	13	7	39

Length of detentions

LENGTH OF DETENTIONS	# OF DETENTIONS
0-5 days	8
6-10 days	13
11-30 days	16
31-60 days	2
61-90 days	0
More than 90 days	0
TOTAL	39

Demographics of people detained

AGE	19-24	25-64	65-74	75-84	85+
# detained	0	6	8	11	12

GENDER	FEMALE	MALE	OTHER
# detained	24	13	0
% detained	64.9%	35.1%	0

Reasons for providing emergency assistance

SUBSECTION RELIED ON	59(2)(A)	59(2)(B)	59(2)(C)	59(2)(D)	59(2)(E)
# cases	5	15	22	5	31

REASON	# DETENTIONS
Apparent abuse	7
Apparent neglect	9
Apparent self-neglect	25

REASON FOR NOT BEING ABLE TO SEEK SUPPORT OR ASSISTANCE	# DETENTIONS	% DETENTIONS
Dementia / cognitive impairment	27	69.2%
Acquired brain injury	4	10.3%
Development disability	3	7.7%
Frailty / injury due to advanced age / illness / condition	8	20.5%
Alcohol / drug impairment	4	10.3%
Mental illness	5	12.8%
Physical handicap / disability	5	12.8%
Aphasia	1	2.6%
Not clear	3	7.7%

Discharge from detention excluding those adults who were discharged home with informal supports or a support and assistance plan

TOTAL	39*
1) Certified under the MHA	10
2) Admitted to long-term care w/substitute consent	17
3) Subjected to a court ordered support and assistance plan	0
4) Passed away during AGA detention/hospitalization	1

*The sum across all categories is lower than 39 detentions because we have not included data on adults who were discharged home with informal supports or with formal support and assistance plans.

Northern Health Authority

In response to the Commissioner's order, Northern Health Authority told the Commissioner that they did not use s. 59 of the AGA to detain any adults between 2018 and 2023.

Providence Health Care

Providence Health Care's data shows 28 detentions (against 27 distinct adults) between 2018 and September 2023.

- In 78.6 per cent of detentions (22 out of 28 cases), adults were detained for more than three days; in 25.0 per cent (seven cases) adults were detained for more than five days; in 10.7 per cent (three cases) adults were detained for more than 10 days; in one case an adult was detained for more than 30 days
- In all 28 cases adults were detained in hospital.
- Oral rights notification was provided in 14 of 28 detentions (50 per cent); Among the 14 cases, written rights notification was provided in 13 cases (46.4 per cent of total cases); PHC does not have a record of providing rights notification in 14 of 28 detentions or 50 per cent of the time.
- 85.7 per cent of detentions were detained for apparent self-neglect; 21.4 per cent for apparent neglect and 10.7 per cent for apparent abuse
- PHC most frequently relied on the ss. 59(2)(c) and 59(2)(e) to detain.

Detentions most commonly ended with admissions to long-term care with substitute consent or discharge home.

Number of detentions by year

YEAR	2018	2019	2020	2021	2022	2023	TOTAL
# of detentions	8	0	2	4	8	6	28

Length of detentions

LENGTH OF DETENTIONS	# OF DETENTIONS
0-5 days	21
6-10 days	4
11-30 days	2
31-60 days	1
61-90 days	0
More than 90 days	0
TOTAL	28

Demographics of people detained

AGE	19-24	25-64	65-74	75-84	85+
# detained	0	12	6	5	4

GENDER	FEMALE	MALE	OTHER
# detained	13	14	0
% detained	48.1%	51.9%	0

Reasons for providing emergency assistance

SUBSECTION RELIED ON	59(2)(A)	59(2)(B)	59(2)(C)	59(2)(D)	59(2)(E)
#	7	11	17	1	22
%	25.0%	39.3%	60.7%	3.6%	78.6%

REASON	# DETENTIONS
Apparent abuse	3
Apparent neglect	6
Apparent self-neglect	24

REASON FOR NOT BEING ABLE TO SEEK SUPPORT OR ASSISTANCE	# DETENTIONS	% DETENTIONS
Dementia / cognitive impairment	19	67.9%
Acquired brain injury	2	7.1%
Development disability	3	10.7%
Frailty / injury due to advanced age / illness / condition	11	39.3%
Alcohol / drug impairment	5	17.9%
Mental illness	6	21.4%
Physical handicap / disability	4	14.3%
Aphasia	0	0%
Not clear	1	3.6%

Discharge from detention

TOTAL	28
1) Certified under the MHA	11
2) Admitted to long-term care with substitute consent	8
3) Subjected to a court ordered support and assistance plan	0
4) Passed away during AGA detention/hospitalization	1

*The sum across all categories is lower than 28 detentions because we have not included data on adults who were discharged home with informal supports or with formal support and assistance plans.

Vancouver Coastal Health Authority

VCHA detained adults 68 times (against 68 adults) between 2018 and September 2023.

- Only 29.4 per cent of detentions were for five days or less; 47.1 per cent of detentions were between six to 10 days; 23.5 per cent were 11 days and over. The longest detention in VCHA was 95 days.
- The vast majority of detentions (97.1 per cent) were in hospital.
- Slightly less than half of adults detained in VCHA are female (47.1 per cent). 79.4 per cent of adults detained were over 65. 100 per cent of adults detained in VCHA were identified as having a disability and 73.5 per cent as having mental health and/or substance use disorders.

Apparent self-neglect (79.4 per cent) is by far the most common reason cited for the need for emergency assistance. This is followed by apparent abuse (14.37 per cent) and then apparent neglect (13.2 per cent). Dementia or cognitive impairment (83.8 per cent) is cited most frequently as the reason adults are assumed to be incapable of accepting or refusing support and assistance. This is followed by frailty or injury due to advanced age (30.9 per cent).

In only 57.4 per cent of cases does VCHA have a record of providing rights notification to adults detained under the AGA between 2018 and 2023. VCHA explained that the data they provided to the Commissioner is "likely inaccurate" because they expect staff to read the rights notification form to adults, but staff are not required keep a copy of the form on the adult's health record. Even more concerning, VCHA only has a record of providing written reasons to adults detained under the AGA in 33.8 per cent of cases. Further, VCHA has no records of facilitating access to counsel for any adult detained between 2018 to September 2023.

Many adults were discharged home with informal supports or a support and assistance plan after being detained under s. 59(2). Almost half (44.1 per cent) were admitted to long-term care after their period of hospitalization and about three in 10 (29.4 per cent) were certified under the *Mental Health Act*.

Number of detentions by year

YEAR	2018	2019	2020	2021	2022	2023	TOTAL
# of detentions	6	9	8	13	17	15	68

Length of detentions

LENGTH OF DETENTIONS	# OF DETENTIONS
0-5 days	20
6-10 days	32
11-30 days	12
31-60 days	2
61-90 days	1
More than 90 days	1
TOTAL	68

Demographics of people detained

AGE	19-24	25-64	65-74	75-84	85+
# detained	0	14	17	22	15

GENDER	FEMALE	MALE	OTHER
# detained	32	36	0
% detained	47.1%	52.9%	0

Reasons for providing emergency assistance

SUBSECTION RELIED ON	59(2)(A)	59(2)(B)	59(2)(C)	59(2)(D)	59(2)(E)
#	15	31	56	1	40
%	22.1%	45.6%	82.4%	1.5%	58.8%

REASON	# DETENTIONS	%
Apparent abuse	10	14.7%
Apparent neglect	9	13.2%
Apparent self-neglect	54	79.4%

REASON FOR NOT BEING ABLE TO SEEK SUPPORT OR ASSISTANCE	# DETENTIONS	% DETENTIONS
Dementia / cognitive impairment	57	83.8%
Acquired brain injury	11	16.2%
Development disability	2	2.9%
Frailty / injury due to advanced age / illness / condition	21	30.9%
Alcohol / drug impairment	12	17.6%
Mental illness	11	16.2%
Physical handicap / disability	12	17.6%
Aphasia	0	0.0%
Not clear	0	0.0%

Discharge from detention not including adults who were discharged home with information supports or with support and assistance plans and not including adults who consented to their admission to long-term care

TOTAL	68*
1) Certified under the MHA	20
2) Admitted to long-term care with substitute consent	25
3) Subjected to a court ordered support and assistance plan	0
4) Passed away during AGA detention/hospitalization	1

*The sum across all categories is lower than 68 detentions because we have not included data on adults who were discharged home with informal supports or with formal support and assistance plans.

Vancouver Island Health Authority

VIHA's data shows five detentions (against four distinct adults) under the AGA between 2018 and September 2023.

- Three adults were detained for less than 24 hours while the fourth adult was detained for 212 days (over seven months).
- Three adults were detained in hospital (one adult was detained twice in hospital) and one adult was transported out of high-risk situation and admitted to long-term care with consent.
- The three adults who were detained for less than 24 hours were detained under sections 59(2)(b) and (c) or 59(2)(c) alone. The adult who was detained in hospital for 212 days was detained under section 59(2)(b).
- In all four cases, VIHA indicated that after being detained the adults were admitted to care facilities with substitute consent.
- Written rights notification was provided in four out of five detentions. One detainee received oral rights notification. VIHA does not have a record of facilitating access to counsel for any of the five times they detained adults under the AGA.

Number of detentions by year

YEAR	2018	2019	2020	2021	2022	2023	TOTAL
# of detentions	0	0	0	0	2	3	5

Length of detentions

LENGTH OF DETENTIONS	# OF DETENTIONS
0-5 days	4
6-10 days	0
11-30 days	0
31-60 days	0
61-90 days	0
More than 90 days	1
TOTAL	**5**

Demographics of people detained

AGE	19-24	25-64	65-74	75-84	85+
# detained	0	0	2	1	1

GENDER	FEMALE	MALE	OTHER
# detained	2	2	0
% detained	50%	50%	0%

Reasons for providing emergency assistance

SUBSECTION RELIED ON	59(2)(A)	59(2)(B)	59(2)(C)	59(2)(D)	59(2)(E)
#	0	4	3	0	0

REASON	# DETENTIONS
Apparent abuse	3
Apparent neglect	2
Apparent self-neglect	1

REASON FOR NOT BEING ABLE TO SEEK SUPPORT OR ASSISTANCE	# DETENTIONS	% DETENTIONS
Dementia / cognitive impairment	3	60.0%
Acquired brain injury	0	0.0%
Development disability	0	0.0%
Frailty / injury due to advanced age / illness / condition	0	0.0%
Alcohol / drug impairment	0	0.0%
Mental illness	0	0.0%
Physical handicap / disability	0	0.0%
Aphasia	2	40.0%
Not clear	2	40.0%

Discharge from detention

TOTAL	5
1) Certified under the MHA	1
2) Admitted to long-term care with substitute consent	4
3) Subjected to a court ordered support and assistance plan	0
4) Passed away during AGA detention/hospitalization	0

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