

MENTAL HEALTH ACT

Form 1/Form 2 Criteria + Police Officer Authority

Form 1: Criteria for Application for Psychiatric Assessment

In most cases, the path to an involuntary admission begins with an Application for Psychiatric Assessment ("Form 1"). The physician who makes such an application need not be a psychiatrist; however, the physician must have personally examined the person within the past seven days prior to completing the application.

In addition to his or her own observations, the physician is entitled to rely on the reports of others about the person, but the physician must distinguish between the two and document accordingly. There is no requirement that the examination take place in hospital. In practice, such examinations often take place in emergency departments and may take place in a physician's office in the community.

The statutory authority for a Form 1 assessment is found in section 15 of the MHA. There are two sets of criteria, which have come to be known as Box A and Box B criteria, since that is how they are set out on the approved Form 1. We have emphasized the use of the conjunctive "or" in the criteria to show that not all of the "behaviour" criteria that are set out in a, b and c must be met. Rather, the physician need only find that one of the criteria is met in that portion of the test. The use of the conjunctive "and" indicates that, in addition to one of the a, b, or c, the physician must be of the opinion that a person is suffering from a mental disorder such that it is likely to result in one of the types of harm set out in d, e, or f. Again, the physician need not find that all of the harms will arise. One is sufficient to ground the involuntary admission.

"Box A"

Box A is known as the "serious harm test" and is derived from the language of subsection 15(1):

15.(1) Where a physician examines a person and has reasonable cause to believe that the person,

(a) Has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself;

(b) Has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; or

(c) Has shown or is showing a lack of competence to care for himself or herself, and, if in addition, the physician is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(d) Serious bodily harm to the person;

(e) Serious bodily harm to another person; or

(f) Serious physical impairment of the person, the physician may apply in the prescribed form for a psychiatric assessment of the person

“Box B”

The Box B criteria were added to the MHA as amendments in 2000 to provide the authority to involuntarily admit persons who suffered from recurrent mental disorders that have responded to treatment in the past. Like Box A criteria, the Box B criteria require the physician to have personally examined the person, and formed a reasonable belief that the person:

(a) Has previously received treatment for mental disorder of an ongoing or recurring nature that, when not treated, is of a nature or quality that likely will result in serious bodily harm to the person or to another person or substantial mental or physical deterioration of the person or serious physical impairment of the person; and

(b) Has shown clinical improvement as a result of the treatment;

and, if in addition, the physician is of the opinion that the person,

(c) Is apparently suffering from the same mental disorder as the one for which he or she previously received treatment or from a mental disorder that is similar to the previous one;

(d) Given the person’s history of mental disorder and current mental or physical condition, is likely to cause serious bodily harm to himself or herself or to another person or is likely to suffer substantial mental or physical deterioration or serious physical impairment; and

(e) Is incapable, within the meaning of the Health Care Consent Act, 1996, of consenting to his or her treatment in a psychiatric facility and the consent of his or her substitute decision-maker has been obtained,

the physician may make application in the prescribed form for a psychiatric assessment of the person.

A Form 1 takes effect on the date that it is signed by the physician, and that must be within seven days of the physician’s last examination of the person who is subject of the application. Once signed, the Form 1 is effective for seven days and provides authority for any person to take the person to a psychiatric facility where he or she may be detained, restrained, observed and examined for no more than 72 hours.

Form 2

In addition to a physician’s application for psychiatric assessment (Form 1), any person can appear before a justice of the peace and provide sworn information that there is a person within the jurisdiction of the justice, who meets either the Box A or Box B criteria outlined above.

After considering that information, the justice of the peace may issue an order in the prescribed form for the examination of the person by a physician. This is called a “Form 2” application. It is sometimes used by concerned family members but may also be resorted to by other persons who have come into contact with a person who they believe requires mental health care.

The General Regulation enacted under the MHA states that for the purposes of this type of order, the “information on oath” that is brought before the justice of the peace may be oral or written information, and may include documents and other materials relevant to the justice’s determination as to whether the criteria are met. The Form 2 order is directed to the police in the same locality where the

justice has jurisdiction and provides authority to the police to take the person named in the order into custody “forthwith” to an “appropriate place” where the person may be detained for examination by a physician. For the purposes of this section and also section 17 discussed below, the place to which people are most often taken is a hospital emergency department. However, the MHA terminology of “appropriate place” confers discretion to have the person examined in a physician’s office or other facility, if need be. It is common for the physician’s Form 2 examination to result in a Form 1 application for psychiatric assessment.

MHA SECTION 17: ACTION BY A POLICE OFFICER

If the following 4 requirements are met, a police officer may take a person and bring the person before a physician for a section 15 examination.

The officer must have reasonable and probable grounds to believe that a person is acting or has acted in a disorderly manner.

(The courts have interpreted this to mean behaviour that is to some extent irrational, although not necessarily unruly. There is no need for the officer to have reasonable and probable grounds to believe that criminal conduct is occurring or has occurred.)

Past/Present Test:

The officer must have reasonable cause to believe that the person:

- has threatened or is threatening to cause bodily harm to self or
- has attempted or is attempting to cause bodily harm to self or
- has behaved or is behaving violently towards another person or
- has caused or is causing another person to fear bodily harm from self or
- has shown or is showing a lack of competence to care for self.

The Future Test:

The officer must be of the opinion that the person is apparently suffering from mental disorder that will likely result in one or more of the following:

- serious bodily harm to self or
- serious bodily harm to others or
- serious physical impairment of self.

The officer must be of the opinion that it would be dangerous to proceed by way of an application to a justice of the peace.