

## STREET LAW SMARTS #10

### MENTAL HEALTH

#### Ontario Disability Support Program

The Ontario Disability Support Program (ODSP) is a type of social assistance available to you if you have a disability. See Street Law Smarts #4 – OW and ODSP for more information on how to qualify for ODSP.

Sometimes, an ODSP worker can appoint a person or an organization to manage ODSP money on your behalf. This person is called a trustee. This is different from having a power of attorney, and it does not necessarily mean that you are “incapable” under the law.

A trustee is usually appointed because the ODSP worker becomes aware that you may need help managing ODSP payments. The ODSP employee should inform you in writing of the decision to appoint a trustee for you. The role of the trustee is to manage ODSP income for your benefit.

You should have a cooperative relationship with your trustee and they should have your best interests in mind. ODSP is required to periodically review the decision to appoint a trustee, and a review will be conducted if a family member, friend, representative, the trustee, or ODSP worker asks for it.

If you do not agree with the decision to appoint a trustee, you can ask in writing for a review of the decision. If you are not successful with the review, you can appeal the decision to the Social Benefits Tribunal. There are short timelines for both the review and the appeal, so you should get legal advice as soon as possible.

Contact Legal Aid Ontario: 1 (800) 668-8258 to find your nearest legal aid clinic to help you. Most legal aid clinics will help you make an appeal if your ODSP application is denied.

#### Hospitalization

If you are having a mental health problem, there are different ways that you can be admitted to hospital. You can either be admitted voluntarily, by going to the hospital and asking to be admitted, or involuntarily, against your will. A voluntary hospitalization can change to an involuntary one, and vice versa, if your condition changes. Ways to be involuntarily hospitalized include:

a) Form 1 - A Doctor Applies for Psychiatric Assessment

One path to involuntary hospitalization is through a Form 1. Form 1 is an Application for Psychiatric Assessment, which is a form signed by any doctor (not just a psychiatrist).

The form must be signed within seven days of the doctor seeing you. Once it is signed, it is valid for seven days.

Within those 7 days a police officer has the authority to take you immediately to a psychiatric hospital. The Form 1 does not allow anyone to detain you in jail or in any other institution other than a psychiatric hospital. The Form 1 allows a doctor to hold you in a hospital for up to 72 hours to complete a psychiatric assessment.

The physician must have reasonable cause to believe that you are suffering from a mental illness and that:

- You are in danger of causing serious harm to yourself, another person, or may unintentionally injure yourself; or
- You have previously received treatment for the same mental problem.

The physician must provide you with written reasons for the hospitalization, and must inform you of your right to consult a lawyer.

Once the assessment is completed you must be released, admitted as a voluntary or informal patient, or admitted as an involuntary patient. If the doctor decides to admit you as an involuntary patient, you will be placed on a Form 3. See more information below.

In some cases, such as emergencies or to prevent you from hurting yourself or others, medical staff can administer treatment to you even if you don't want treatment. For more on the test that must be met for a doctor to sign a Form 1, see section 15 of the Mental Health Act.

#### b) Form 2 - Justice of the Peace Orders an Examination

Another way you may be hospitalized involuntarily is through a Form 2. A person who believes that you are danger for serious harm to yourself or others or that you have a previous mental disorder and are suffering serious physical impairment or substantial mental or physical deterioration may appear in front of a Justice of the Peace and ask them to issue a Form 2. This form is valid for 7 days and orders that you be examined by a physician.

The Form 2 gives authority to the police to detain and take you to an appropriate place to be examined by a physician - usually an emergency room, or a clinic. The physician will then issue a Form 1 if they believe the relevant criteria have been met.

If you are brought to a psychiatric facility on Form 2, the Form does not authorize your detention at the facility after an examination unless a Form 1 application for psychiatric assessment is then completed by a physician.

#### c) Apprehension by the Police

A police officer may take you to be examined by a physician without first obtaining a Form 2 when they have reasonable or probable grounds to believe that you are acting

in or have acted in a disorderly manner and they have reasonable cause to believe that you are threatening or are attempting to cause bodily harm to yourself, acting violently towards another person, or is showing a lack of competence to care for yourself. The police officer must also believe that it would be dangerous to proceed by getting a Form 2 order.

### **Once you are admitted to the hospital**

You may be detained for 72 hours for purposes of psychiatric assessment. If you are examined and found to have met the criteria for involuntary admission, a Certificate of Involuntary Admission (Form 3) may be issued. The Certificate is valid for two weeks.

The doctor must think:

- (1) you are a danger to yourself, another person, or may unintentionally hurt yourself, or
- (2) your condition is deteriorating and they require hospitalization.

The certificate may be renewed if those criteria continue to be met. The doctor must examine you again in order to decide this. The length of stay for renewed certificates are:

- First renewal -valid for one month
- Second renewal- two months
- Third renewal- three months

The doctor may also let you leave if they feel that you should no longer be involuntarily hospitalized.

At each renewal, the physician must issue a written notice telling you why you are being detained, that you are entitled to a hearing before the Consent and Capacity Board, and that you have the right to have a lawyer. After the fourth renewal you will have an automatic hearing before the Board.

### **Consent and capacity**

Once you are in the hospital, you will be asked if you consent to treatment. There is a presumption that you have the capacity to consent to treatment, even if you are under age 18.

The Health Care Consent Act says that you are capable with respect to health care decisions if you understand the information that is relevant to make a decision about your health care choices and are able to understand the consequences of the decisions you make.

If it is determined that you are incapable of consenting to treatment, you will be declared incapable and a Substitute Decision Maker will be appointed to make treatment decisions for you. For more information on this, see the PPAO Information Guide on Substitute Decision Makers at:

[http://www.sse.gov.on.ca/mohltc/PPAO/en/Pages/InfoGuides/TreatmentIssues\\_B.aspx?openMenu=smenu\\_TreatmentIssues](http://www.sse.gov.on.ca/mohltc/PPAO/en/Pages/InfoGuides/TreatmentIssues_B.aspx?openMenu=smenu_TreatmentIssues).

A finding of incapacity may be challenged at the Consent and Capacity Board.

**If a doctor has decided that you are incapable of making decisions, or if the doctor wants to administer treatment against your will, you should ask to speak to the Rights Advisor, and you should ask them to help you with an appeal of the decision.**

## **The Consent and Capacity Board**

Every patient who is involuntarily hospitalized has a right to challenge their detention in the hospital. This is done by applying for a hearing at the Consent and Capacity Board.

At every fourth renewal of detention, a hearing will take place automatically. You have a right to participate, but you are not required to participate. The Board will either:

- Confirm your detention, or
- Disagree with the doctor and revoke your involuntary status. You will then be a voluntary patient and do not have to stay at the facility if you don't want to.

## **Rights Advisor**

When a Certificate of Involuntary Admission is issued or renewed, the hospital is required to provide a Rights Advisor for all patients over age 14.

The Rights Advisor will discuss why the Certificate was issued and inform you of your rights, including rights to a consent and capacity board hearing. Rights Advisors are also knowledgeable about how to get legal services and Legal Aid. For more information about your rights, contact:

## **Psychiatric Patient Advocate Office**

1-800-578-2343 or 416-327-7000

[www.ppao.gov.on.ca](http://www.ppao.gov.on.ca)

## **Mental health in criminal courts**

If you are facing a criminal charge, you may be eligible for a program called mental health diversion. If the prosecutor agrees, you can be diverted out of the criminal court system and into the mental health system if the offence that you committed was influenced by your mental health problem. When this happens, you will meet with a diversion worker who will design a program for you that might include a psychiatric assessment, help with meeting basic needs, and getting short and long-term supports in place.

You can decide not to continue the diversion program and can choose instead to defend yourself in the regular criminal process.

If you complete the diversion program, the charges against you will may be withdrawn, and you will not have a criminal conviction. However, you a record will be kept about the charge. Police records and criminal records are a complicated legal topic. Consult a lawyer for further information.

If you have a mental health problem and are charged with a criminal offence, you should explain your mental health issue with your lawyer and ask if mental health diversion is possible. If you do not have a lawyer, you can speak to the duty counsel, and ask for help with mental health diversion.

You should not talk to the mental health court worker, the crown/prosecutor, or the police about what happened in the incident where you were charged, without talking to a lawyer first. See **Street Law Smarts #1: Where to get legal help** for information on finding a lawyer.

**There are also provisions in the Criminal Code about being found unfit to stand trial or not criminally responsible for reasons of mental disorder. Before making any decisions about using these provisions, it is very important to speak to a lawyer.**

To get a lawyer, call Legal Aid Ontario: 1 (800) 668-8258 or talk to the duty counsel at the courthouse.