ADULT MENTAL HEALTH

MENTAL HEALTH ACT 1983

SECTION 135 POLICY

Ratified by the Policy Making Committee September 2003
ADULT MENTAL HEALTH
MENTAL HEALTH ACT 1983 - SECTION 135

PLEASE NOTE: Each local Borough will need to agree practical arrangements with their local Borough Police, Ambulance and Social Services Departments.

This policy, in all cases, to be read in conjunction with local Borough Section 135 policies.

1. Introduction

The aim of this policy is to secure a speedy and accurate co-ordination of all agencies in the application of Section 135 of the Mental Health Act 1983.

The policy seeks to promote the best interests of the patients at all times.

This policy and procedure refers to persons who are:

(a) the responsibility of South London and Maudsley NHS Trust

(b) on leave, or absent without leave, while detained by the Trust.

2. Section 135(1)

2.1 The Act

This subsection enables an Approved Social Worker (ASW) to make an application, on information under oath to a Magistrate, for a warrant authorising a Constable to enter premises within the jurisdiction of the Magistrate, by force if necessary, where a person thought to be suffering from mental disorder -

a) has been, or is being, ill treated, neglected or lacking proper control, OR

b) is unable to care for him/herself and is living alone,

Entry must be for the purpose of removing that person to a place of safety for a maximum of 72 hours with a view to making an application under Part II of the Act (Sections 2 or 3), or other arrangements for their treatment.

In the execution of this warrant the Constable shall be accompanied by the ASW and a registered medical practitioner.

2.2 Procedure

2.2.1 Co-ordination and communication:

The ASW has overall responsibility for co-ordinating the process and must keep in touch with the host ward to aid co-ordination.

Where a decision has been taken to apply for a warrant the ASW must inform the relevant catchment ward for the purpose of:

a) enabling the ward staff to make advance arrangements to secure a Section 12 approved doctor for the purpose of assessment in the event of execution of a warrant, if required. Confirmation must be given to the ward by the ASW when the warrant is being executed and when the patient is being brought to the Trust premises so that the Section 12 doctor may be present for assessment if required.

This only applies where a section 12 doctor has not attended the execution of the warrant and already signed medical recommendations.

b) ensuring that the ward staff obtain any existing Trust records relating to the person to assist the assessment.

c) to make arrangements for admission if required.
2.2.2 The assessment - 135 (1):

Once access to the person is obtained, a joint decision must be made by the ASW and the Registered Medical Practitioner present (who may not be approved under section 12), as to whether it is necessary:

to convey the person to the hospital for the assessment, or -

whether on the basis of the immediate formulation;

1. That no further pursuit of an application under part 2 of the Act is required and other arrangements can be made.

2. To assess further, if appropriate, and complete medical recommendation/s. If two doctors are present (including one Section 12 approved) a full application may be completed.

Any one doctor may complete the first recommendation immediately.

3. To convey to hospital immediately for full assessment. In this case the medical practitioner present will usually complete the first recommendation at the premises.

The assessment must be carried out by two registered medical practitioners, one of whom is approved under Section 12, and the ASW.

Where a decision has been made, the ASW can only make an application on the basis of the two medical recommendations.

It is therefore good practice to have the section 12 approved doctor either present at the execution of the warrant or at the hospital as the patient arrives, so that the ASW can complete the application promptly. See para. 2.2.1.

The location of the assessment at the place of safety should be determined in advance by the executioner of the warrant depending on the condition and needs of the patient.

3. Section 135 (2)

3.1 The Act

This subsection provides for the application by any constable, or authorised* person, to a Magistrate for a warrant authorising a policeman to enter premises within the jurisdiction of the Magistrate, by force if necessary, for the purpose of taking, or retaking, a patient who is already detained under the Act where there is reasonable cause to believe that:

a) the patient is to be found on the premises, AND

b) admission to the premises has been refused or that a refusal is reasonably anticipated.

*Authorised person - any officer on the staff of the Hospital, any ASW or any person authorised by the Mental Health Act managers in writing.

3.2 Procedure

3.2.1 Co-ordination and communication:

The authorised person has overall responsibility for co-ordinating the process.

Communication should take place between the ward and the community team, to ascertain the whereabouts of the patient.

3.2.2 Authorisation:

The authorised person would normally be the ward Named Nurse.

On occasions, it may be more appropriate that the CPA Key Worker / Case Manager is the authorised person.

Trust authorised * persons are Nurses registered under part 3 and 13 of the UKCC Register at grade E or above and employed by the Trust.
3.2.3 When to obtain a warrant:
A warrant may only be obtained where attempts to make satisfactory personal contact with the patient for the purpose of continuing the assessment or treatment for which they are detained has failed.

3.2.4 Obtaining a warrant - S 135 (2):
The authorised person must go to any Magistrates Court as listed below with the following:
- 'Information Support of Application for Warrant to Enter Premises and Remove Patient' form
- 'Warrant to Search for and Remove Patient' form
- letter of authorisation from the Trust
- detention details
- photocopies of MHA section papers
- details of leaving the ward
- section 17 conditions and papers if applicable
- reasons for concern
- details of any risks to self or others
- location of the patient and property to be entered
- previous attempts to visit and retrieve the patient, by whom and when, including revocation of leave and recall under MHA S 17 4 where applicable

Application forms for a warrant and the authorisation letter may be obtained from the Trust MHA office. Supplies should also be held in each ward. The forms must be completed by the authorised person following consultation with the patient’s RMO.

3.2.5 Making a report and completing the forms:
The property to be entered must be within the jurisdiction of the Magistrate to whom the application is made.

Magistrates Courts are open during office hours. However applicants are advised to attend before either the morning sitting starting (10:00 a.m.) or the afternoon sitting (2:00 p.m.). Although it is possible to access the Magistrate at other times, via the Clerk of the Court, there may be a wait some delay before access. See appendix.

Lists of ‘out of hours’ magistrates are held at service sites and Trust MHA offices.

Executing the warrant:
The warrant will be executed by a constable who may be accompanied by:

a) a medical practitioner;
b) any authorised person. See section 3.2.2

While the warrant is valid for twenty eight days it should always be executed as soon as possible.

3.2.6 Communication
Where the authorized person is a member of a community team, they are responsible for communicating with the host ward about the expected time of arrival, condition and needs of the patient.
4. Admission

Following the execution of the warrant for either Section 135(I) or Section 135(2) the patient is admitted/returned to the appropriate ward.

If there is uncertainty regarding the level of behavioural disturbance then please refer to your local Borough policy as to where the patient is most appropriately assessed.

5. Transport

The authorized person will be responsible for arranging transport for the patient or calling an ambulance as necessary. Please refer to your local Borough Policy for arrangements.

6. Police powers of entry

Where a warrant has not been obtained and entry is refused, and it appears that it is urgently necessary to gain access for the purpose of saving "life or limb" or "preventing serious damage to property", the police are empowered by Section 17(1)(e) of the Police and Criminal Evidence Act (P.A.C.E.) to enter and search the premises. This does not however, give the police the authority to remove any person from the premises unless the person is subsequently arrested or detained under any other enactment. This may be considered in such circumstances where a visit is made with access denied and it is necessary to force entry for purposes specified above and it would not be appropriate to wait for issue of a warrant.

7. Magistrates Courts

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<tr>
<th>Croydon</th>
<th>Bromley</th>
<th>South Western</th>
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<tbody>
<tr>
<td>Barclay Road Croydon CR9 3NG</td>
<td>Court House London Road Bromley BR1 1RA</td>
<td>176 A Lavender Hill SW11</td>
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<tr>
<td>8.30 - 16.45 h Mon. - Thurs. 8.30 - 16.00 h Friday</td>
<td>8.45 - 17.00 h Mon. - Fri. 020 8325 4003 phone 020 8325 4009 fax</td>
<td>020 7228 9201 phone</td>
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<td>020 8686 8680 phone 020 8680 9801 fax</td>
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<td>Horsferry Road 70 Horsferry Road SW1</td>
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<td></td>
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<td>020 7233 2000 phone</td>
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<td></td>
<td></td>
<td>Camberwell 15 D’Eynsford Road SE5</td>
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<td>020 7703 0909 phone</td>
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8. Sources

Metropolitan Police distance learning module - Understanding mental disorder No. 94
Police and Criminal Evidence Act 1984
Mental Health Act 1983
DOH Revised Code of Practice MHA 1983.