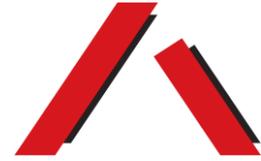


FACTSHEET: ABSENT WITHOUT PERMISSION

This factsheet has been prepared by Queensland Advocacy Incorporated (QAI), an independent, community-based systems and legal advocacy organisation for people with disability in Queensland (qai.org.au).

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**Queensland Advocacy
Incorporated**

Advocacy for people with disability

Level 2, 43 Peel Street
PO Box 3384
South Brisbane QLD 4101

T (07) 3844 4200

F (07) 3844 4220

E qai@qai.org.au

ABN 97 527 905 201

This factsheet is about what happens if a patient runs away from a Queensland mental health service and **stays within Queensland**. People who run away interstate will be subject to the corresponding laws of that state, which may or may not allow for their apprehension and return to Queensland.

Definitions used

For abbreviations, see the end of this factsheet.

An **involuntary patient** includes someone who is under an Examination Authority, Recommendation for Assessment, Treatment Authority, Treatment Support Order or Forensic Order, or is a Classified Patient (a person in hospital for treatment having been transferred from criminal custody).

An involuntary patient is **absent without permission** if they:

- leave a hospital, including an emergency department, or community health service without approval; or
- do not return from approved leave at the appointed time; or
- are in the community and have had their approved leave suspended or revoked; or
- are a community patient and do not attend a mental health appointment as required by their authority or order. (see s 363 MHA)

An **authorised person** is someone authorised to transport a patient back to hospital, such as an ambulance officer or a health practitioner, under an Authority to Transport Absent Person.

What happens if a person is absent without permission?

An **involuntary patient** who is **absent without permission** may be involuntarily returned to hospital.

A voluntary patient cannot be “absent without permission” and so cannot be forcibly returned to hospital, although the treating team may follow them up and encourage them to return to hospital or attend their next appointment.



Being absent without permission will be recorded in the patient's health record and can delay the patient's progress with treatment, transition back into the community, and/or coming off the order.

The least restrictive option appropriate to the level of risk should always be exercised to return the patient (see s 3(2) MHA and p 4 of the Guidelines).

As a first step, the treating team must make reasonable efforts to contact the patient and encourage them to return voluntarily (s 364(3) MHA). This requirement does not apply if there is a risk that the patient may harm themselves or others.

Authority to Transport Absent Person

If the patient cannot be encouraged to return voluntarily, or there is a risk the patient may harm themselves or others, then the treating team can issue an Authority to Transport Absent Person which authorises a person, such as an ambulance officer or health practitioner, to transport the patient back to hospital.

Alternatively, or in addition, a request for police assistance may be made. The treating team must give reasons why it is necessary to involve the police. Generally, police should only be involved where there is serious risk to the patient or others, or criminal charges may be or have been laid. (p 6 Guidelines)

Normally a health practitioner must accompany the police (p 6 Guidelines), although it may be appropriate for the police to act alone where it is not known where the patient is or it is unsafe for the health practitioner to be present. (p 6 Guidelines)

An Authority to Transport Absent Person ends:

- when the person returns to hospital; or
- 3 days after the person absconds while subject to a Recommendation for Assessment, Examination Authority, or while being detained under s 36 for one hour to make a Recommendation for Assessment (s 365 MHA); or
- if the person's order or authority ends or is revoked. (Guidelines)

Use of force

An authorised person transporting the patient may act with the help, and using the force, that is necessary and reasonable in the circumstances (s 373 MHA). This includes administering medication by a doctor or registered nurse if there is no other reasonably practicable way to protect the person or others from physical harm (s 374 MHA). It can also include the use of mechanical restraint in certain circumstances, but this requires the Chief Psychiatrist's approval (s 375 MHA).

Mechanical restraint is the restraint of a person by applying a device to their body or limb to restrict their movement. However, it does not include restraint that is appropriate for the treatment of a physical illness or injury, or restraint permitted by another law (s 244 MHA). For instance, a police officer may be authorised to restrain a person (s 615 PPRA).

Entry into private premises

An authorised person may enter a private premises with the occupier's consent. This consent can be withdrawn at any time, or can be made with conditions. (s 376 MHA)

If the occupier does not give consent, an authorised person may only enter a private premises if they have a Warrant for Apprehension issued by a Magistrate. (s 378 MHA) An authorised person may act under the warrant with the help, and using the force, that is necessary and reasonable in the circumstances. (s 378 MHA, s 615 PPRA)

The power to enter, whether with consent or with a warrant, includes the power to search the place to find the patient, and to remain in the place for as long as reasonably necessary to find the person.

Police also have a general right of entry to carry out an arrest or detain someone (s 21 PPRA), or to prevent imminent risk of injury, property damage or domestic violence. (s 609 PPRA)

Patient rights

A patient being returned to hospital under an Authority to Transport Absent Person must be told that they are being detained and which hospital they are being transported to and how this will affect them. (s 366 MHA)

The patient (or an occupier) can refuse entry to their home by health workers or the police, unless they have a Warrant for Apprehension. The person holding the warrant must try to (unless they believe the person will run away if they do not enter immediately):

- identify themselves to the occupier;
- give a copy of the Warrant to the occupier of the place, which should include:
 - the patient's name;
 - the powers that can be exercised under the Warrant;
 - the time the place can be entered;
 - the date of the Warrant was issued and when it ends (no more than 7 days).
- tell the occupier that they are permitted by the warrant to enter and search the place to find the person named in the Warrant; and
- give the occupier opportunity to allow immediate entry without using force. (s 382 MHA) The occupier may accompany a police officer during their search of the premises. (s 609 PPRA)

Options

The person should return to hospital voluntarily as soon as possible (p 4 Guidelines; p 1 Factsheet). The mental health unit may be contacted before the person's return, to advise of any reasons for the absence, to discuss any concerns and to smooth the process for readmission. It might be useful to contact the Independent Patient Rights Adviser, who might be able to facilitate discussions with the treating team about treatment going forward (s 293 MHA).

If the person does not want to return to hospital voluntarily, it is still worthwhile contacting the treating team to let them know whether the person is safe, steps being taken to address their mental health care, and the reasons for absconding. It is helpful if the person is open to returning to hospital on the right conditions. (p 4 Guidelines).



Forensic orders, treatment support orders and treatment authorities are reviewed automatically by the Mental Health Review Tribunal. If a person is absent without permission, the Tribunal hearing may be adjourned indefinitely until the person returns to the health service. (s 730 MHA) It is advisable to attend the Tribunal hearing, however, the person will need to accept the Tribunal's decision, including if they decide that the person should be readmitted to hospital (p 14 Guidelines)

A psychiatrist has the option of revoking a person's treatment authority if satisfied the health service has not been able to locate the person for 6 months. However, this is up to the psychiatrist. (s 207 MHA) The psychiatrist has no power to revoke treatment support orders or forensic orders.

For more information

Legislation

Mental Health Act 2016 (Qld) (MHA):

<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2016-005>

Police Powers and Responsibilities Act (Qld) (PPRA):

<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2000-005>

Queensland Health factsheet

Transport of Patients (**Factsheet**):

https://www.health.qld.gov.au/_data/assets/pdf_file/0035/444995/transport-patients-fact.pdf

Chief Psychiatrist documents

Notification to Chief Psychiatrist of Critical Incidents and Non-Compliance with the Act Policy:

https://www.health.qld.gov.au/_data/assets/pdf_file/0020/465212/cpp-notific-critical-incidence.pdf

Involuntary Patient Absences Guidelines (**Guidelines**):

https://www.health.qld.gov.au/_data/assets/pdf_file/0024/574017/pg_patient_absence.pdf

Transfers and Transport Guidelines:

https://www.health.qld.gov.au/_data/assets/pdf_file/0025/574027/pg_transfers_transport.pdf
(includes links to relevant forms)

Independent Patient Rights Advisers

Statewide contact details are available on the Queensland Health website:

<https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/clinical-staff/mental-health/act/resources/patient-rights>, or you can ask your nurse, case manager or treating team for contact information.