

Guide for Applicants Seeking Orders Under the Protection of Children Abusing Drugs Act

Overview

Under section 2 of the *Protection of Children Abusing Drugs Act* ("PCHAD") a Court may grant an apprehension and confinement order if the Court is satisfied that the child is abusing drugs. The Act states that "a child is abusing a drug if the child is using the drug and the use caused or is likely to cause significant psychological or social harm to the child, or physical harm to the child or others". "Drug" is defined as "alcohol or a substance, other than a tobacco product, (i) whose use is controlled by law, or (ii) that is used by the child in a manner that is not intended by the manufacturer of the substance."

The process of applying to the Court for an Apprehension and Confinement Order has three main steps. The first step is to complete a *Notice and Application for Apprehension and Confinement* form and file it with a Clerk of the Provincial Court. The second step is to give notice of your intention to apply for an Order to the Alberta Health Services and to any other guardian the child may have. The third step is appear before a Provincial Court Judge who will consider your application. More detailed instructions are provided below.

You can make an application on your own or with the assistance of a lawyer.

Step 1

Complete and File a Notice and Application for Apprehension and Confinement form

- Write your child's name and birthdate in the spaces provided at the top of the form.
- Under the heading "Application", write your name, address, and telephone number in the spaces provided. You must also place a checkmark in the boxes that apply to you.
 - ❖ Everyone applying for an Order should place a checkmark in the first box. These are the basic terms that will appear in all Orders for Apprehension and Confinement granted by the Court.
 - ❖ Place a checkmark in the second box if you believe that you will need police assistance to locate and/or physically move your child into a Protective Safe House.
 - ❖ Place a checkmark in the third box if you are requesting police assistance and you know that your child can likely be found at a place that is not your own home.
- Under the heading "Affidavit – Reasons for Application", there is a paragraph (a) and paragraph (b).
 - ❖ In paragraph (a), use the space provided to write your reasons for asking the Court for an Apprehension and Confinement Order. Use your own words to describe your child's use of drugs and/or alcohol and how that use is or may cause harm to your child or to others. If you need more space, write your reasons on another piece of paper and attach it to the form. Any extra pages that are attached become part of your application.
 - ❖ In paragraph (b), use the space provided to say where you believe your child can be found and explain why you think your child can be found there. If you need more space, write your reasons on another piece of paper and attach it to the form. Any extra pages that are attached become part of your application.
- Sign your name above the line that says "Signature of Applicant".

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Step 2

Give Notice to Alberta Health Services and to any other guardian

You must tell Alberta Health Services and any other guardian(s) that you are making an application for Apprehension and Confinement, and the date, time and place of the Court hearing.

You must give notice at least 2 days before your application will be heard by the court.

Giving Notice to Alberta Health Services

- The most direct way to notify Alberta Health Services of your application is to call 1 888 844-5395. This is a province-wide hotline available from 8:30 a.m. to 4:30 p.m. Monday - Friday and is staffed by specially trained Alberta Health Services employees.
- Once you have given notice to Alberta Health Services, complete the form titled *Affidavit of Service to Alberta Health Services*
 - ❖ File your Affidavit at the Court House where you filed your application form.

Giving Notice to Any Other Guardian

- If your child has any other legal guardians, you must make all reasonable efforts to notify each other guardian that you are making an application

for an Apprehension and Confinement Order, and the date, time and place of the Court hearing.

- ❖ There are several ways that you can give notice to another guardian. For example, you can give a copy of your application form to the other guardian, you can send a copy by fax or e-mail, or give verbal notice in person or by telephone.
- ❖ You must give notice to a director of the *Child, Youth and Family Enhancement Act* if a director is a guardian of your child, as sometimes happens when child welfare authorities are involved with a family. You may wish to get advice from a lawyer in this case.
- ❖ If you think another person might be a legal guardian but you are not certain, you should give notice to this person. Depending on your situation, an ex-spouse or a former common law partner could be a legal guardian of your child. You may wish to get advice from a lawyer in this case.
- Once you have given notice to the child's other guardian(s), complete the form titled *Affidavit of Service to Other Guardian*. You need to complete a separate form for each guardian served.
 - ❖ File your Affidavit at the Court House where you filed your application form.

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Step 3

Appear before a Provincial Court Judge at a Hearing

- Ten to fifteen minutes before the scheduled time, go to the assigned Courtroom and check-in with the Clerk.
- When your name is called, walk to the front of the Courtroom. The Clerk will ask you to swear or affirm that you will tell the truth when giving your evidence.
- The Judge will hear your application and may make a decision.

**Government
of Alberta ■**

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**Notice and Application for an
Apprehension and Confinement Order**

In the Provincial Court of Alberta
In the Matter of an Application Under Section 2
of the *Protection of Children Abusing Drugs Act*

Regarding _____,
(Child's name)

A child within the meaning of the *Protection of Children Abusing Drugs Act*

Born _____
(Child's birth date [yyyy/mm/dd])

Application

This application is made regarding the Child.

My name is _____.

My address is _____.

My telephone number is () _____.

I am a guardian of the Child.*

I am applying for an order under section 2 of the *Protection of Children Abusing Drugs Act* to:

- a. authorize the confinement of the Child in a protective safe house for a period of not more than 5 days,
- b. authorize the director or the head of the safe house to confine the Child in accordance with the order and,
- c. authorize the Alberta Alcohol and Drug Abuse Commission to assess the Child and to treat the Child for detoxification during the confinement.

I am applying for an order under section 2 of the *Protection of Children Abusing Drugs Act* to authorize a police officer to apprehend and convey the Child to a protective safe house.

I am applying for an order under section 2 of the *Protection of Children Abusing Drugs Act* to authorize a police officer to enter, by force if necessary, the place or premises at _____, and to search for and apprehend the Child.

* If the child has any other guardian(s), including a Director under the *Child, Youth and Family Enhancement Act*, the other guardian(s) must be given notice of this application.

Affidavit - Reasons for Application⁺

In support of my application, I make oath and say:

- (a) My reasons for making this application are: (Describe in your own words what you know about the Child's use of drugs, and what effect you believe the use of drugs is having on the Child. Any additional pages you wish to add must be sworn and attached to this affidavit.)

(b) I believe that the Child may be found at: _____

My reasons for believing the Child is at this location are that:

Signature of Applicant

Sworn before me at _____
City/Town

Place of Commission for Oaths

in the Province of Alberta on _____
Date (yyyy/mm/dd)

Commissioner for Oaths

* Under section 2 of the *Protection of Children Abusing Drugs Act* ("PCHAD"), a Court may grant an apprehension and confinement order if the Court is satisfied that the child is abusing drugs. The Act states that "a child is abusing a drug if the child is using the drug and the use caused or is likely to cause significant psychological or social harm to the child, or physical harm to the child or others". Under section 1 of PCHAD, "drug" is defined as "alcohol or a substance, other than a tobacco product, (i) whose use is controlled by law, or (ii) that is used by the child in a manner that is not intended by the manufacturer of the substance".

Notice

To: Alberta Alcohol and Drug Abuse Commission,* and

To: _____ (name(s) of other guardian(s), if any)

This is your notice that I am applying to the Court for the order described above.

The Court hearing will be at _____ - on _____, _____, 20____,
Day Month

at _____
Location

If you want to speak to the judge about my application, you must attend the Court hearing. At the end of the hearing, the judge will decide whether or not to make an order to apprehend and confine the Child.

If you do not attend the hearing, the judge may make the decision in your absence.

* Notice to the Alberta Alcohol and Drug Abuse Commission may be given by telephone at 1-888-844-5395.