

Civil Commitment Training

The Office of Ombudsman for Mental
Health and Developmental Disability

Civil Commitment Training & Resource
Center

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Contact Information

- First contact can be with Regional Ombudsman for your area.
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- Call Ombudsman for MHDD main office at 1-800-657-3506 or 651-757-1800.

Ombudsman web site

- Web site address is: <http://mn.gov/omhdd>
- The Civil Commitment Training and Resource Center section contains fact sheets, notices counties must give to proposed patients and other info regarding commitment.
- Contains info regarding other office functions.

Mentally Ill Person - Definition

- Any person who:
 - has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgement, behavior, capacity to recognize reality, or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and;

Mentally Ill Person- Definition

- Poses a substantial likelihood of physical harm to self or others as demonstrated by:
 - a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment or,
 - inability, other than indigence, to provide food clothing, shelter or medical care or,
 - a recent attempt or threat to physically harm self or others or,
 - Recent volitional conduct involving significant damage to substantial property.

Chemically Dependent Person

- Any person determined incapable of self-management or management of personal affairs by reason of habitual and excessive use of alcohol, drugs or other mind altering substances and,
- Whose recent conduct due to these substances poses substantial likelihood of physical harm to self or others as demonstrated by:

Chemically Dependent Person

- A recent attempt or threat to harm self or others,
- Evidence of recent serious physical problems or,
- failure to obtain necessary food, clothing, shelter or medical care.

Chemically Dependent Person

- A pregnant woman who has engaged in the habitual use , for non-medical purposes, of the following controlled substances or their derivatives:
- Opium, cocaine, heroin, phencyclidine, methamphetamine, or amphetamine.
- Alcohol and tetrahydrocannabinol added 2 years later to the definition.

Developmentally Disabled Person

- Any person who has been diagnosed as having a significantly sub-average intellectual functioning. (In Mn. It is an IQ of 70 or below) and,
- Demonstrated defects in adaptive behavior manifested before age 22 and,
- Whose recent conduct poses a substantial likelihood of harm to self or others by:

Developmentally Disabled Person

- A recent attempt or threat to physically harm self or others or,
- A failure or inability to obtain necessary food, clothing, shelter, safety, or medical care.

Examiner

- Examiner : Licensed physician or doctoral level psychologist.
- Advance Practice RN's certified in mental health or a Licensed Physician Assistant. These two may not be appointed as examiners for commitment hearings, medication review hearings or Rule 20 evaluations. They may do a statement in support, issue examiner hold and admit patients.

Peace or Health Officer

- Peace Officer: Sheriff, local/ municipal police officer or State Patrol.
- Health Officer: Licensed psychologist, licensed social worker, psychiatric or public health nurse, RN working in an emergency room, any APRN, or a formally designated member of the pre-petition screening team.

Peace or Health Officer

- A mental health professional working with a mobile crisis intervention service as defined in 256B.0624 9 (see 245.462).
- licensed Marriage and Family Therapist with 2 years experience in mental health services and licensed professional clinical counselor.

Peace or Health Officer Authority

- Is a transportation hold.
- May take person into custody and transport to an examiner or treatment facility if,
- There is reason to believe person is MI, CD or DD.
- Must be based on direct observation of person's behavior or,

Peace or Health Officer Authority cont.

- Reliable information of person's recent behavior and knowledge of person's past behavior or psychiatric treatment and,
- The person is in danger of injuring self or others if not immediately detained.
- Peace or health officer shall make written application for admission to treatment facility.

Peace or Health Officer Authority cont.

- Application shall contain statement specifying reasons and circumstances person was taken into custody.
- If danger to specific individual is basis, must include identifying information on those individuals.
- May be admitted after exam by Physician, Advance Practice RN or Phy. Asst. and approval for MI and DD.

Peace or Health Officer Authority

- Approval By Prog. Dir. or designee for CD.
- Peace or Health Officer must give facility name, name of agency employed, phone number or other contact info.
- Purpose is notification person was discharged off hold or went AWOL.

Examiner Emergency Hold

- An examiner may initiate an emergency hold when person is believed to be mentally ill, chemically dependant or developmentally disabled.
- Must have reason to believe person in danger of injuring self or others if not immediately detained.
- Has examined person within past 15 days.

Examiner Hold cont.

- If proposed patient brought to facility by another person, examiner shall make good faith effort to obtain info. on:
 - direct observation of behaviors,
 - knowledge of past behavior,
 - recent and past psych. history,
 - current mental health providers and,
 - any health care directives.
- Use info in decision of need for hold.

Examiner Hold cont.

- Statement shall be :
 - sufficient for peace or health officer to transport to a treatment facility,
 - stated in behavioral terms, not conclusory language
 - sufficient to provide an adequate record.
- If danger is to specific person, statement must identify person.

Consecutive Hold Orders

- A consecutive emergency hold order not issued by the district court is expressly prohibited.

Rights of Patients on a Hold

- Rights:
 - Leave after 72 hours [excluding weekend and legal holidays] unless court ordered to be held longer [Judicial Hold]. Holiday is defined in MS 645.44 Subd. 5
 - Medical exam within 48 hours.
 - Request to change from emergency hold to voluntary status.
 - Request a summary hearing for release from emergency hold.

Voluntary Admission:SDM

- Voluntary admission is preferred over commitment.
- If person lacks capacity to consent Designated Agency may.
- If agency declines or refuses, interested person may petition for SDM.
- Court shall apply criteria in sect.04 subd.1(b)
- This does not apply to neuroleptic medications

Preliminary Procedures

- Interested person shall apply for commitment or early intervention to county of financial responsibility [CFR] for preliminary investigation. Person does not need to qualify for financial, medical or social services.
- If CFR refuses or fails to conduct prepetition screening or file petition, or it is unclear which county is CFR, the county where the patient is present is responsible.
- Appeals are handled pursuant to 256G.09.

Preliminary Procedures

- Pre-petition Screening Team:
 - Interviewer must inform proposed patient his/her statements may be used in report and court.
 - Personal interview
 - Investigation
 - Explore alternatives
 - neuroleptic medications.

Preliminary Procedures [Cont]

- Interviewer must give and offer to read notice .
- Notice explains process,purpose and legal effects of commitment.
- Notice explains rights in process.
- Contact any insurance company.
- Report forwarded to County Attorney.

False Reports [253B.23 subd. 3]

- Any person who willfully makes, joins in, or advises the making of false reports or petition or, willfully makes any false representation to cause an individual to be improperly committed is guilty of a gross misdemeanor.
- The Attorney Generals office shall prosecute violations of this section.

Petition

- Petition filed with county district court in county of financial responsibility.
- Either party may move to have venue changed to district court where the person currently lives whether independently or pursuant to placement.
- Court may grant change if motion is appropriate and is in the interest of justice.

Petition

- WHO?
- WHERE?
- WHAT?
- WHEN?
- List specific reasons LRA's rejected.
- If neuroleptics recommended,request med. review hearing, if applicable.

After Petition is filed...

- Examiner appointed
- Apprehend and hold order. Also called district court hold order.
- Right to Counsel

Preliminary Hearing

- Hold Order Continued?
- Finding of incompetence in Rule 20 will refer to commitment proceedings
- Neuroleptic Medications and Capacity

Examiner Report

- Report must be filed with the court not less than 48 hours prior to the commitment hearing.
- The report must be sent to petitioner's attorney, the respondent, and respondent's attorney immediately upon receiving the report.
- The patient may request 2nd independent examiner of her/his choice.

The Commitment Hearing

- Timing and Notice.
 - Hearing held within 14 days of filing petition, extended 30 days for good cause. 90 days for SDP/SPP.
 - Patient and facility may demand immediate hearing, within 5 business days, 10 additional days with good cause.
 - Parties, attorneys and others named by court must receive 5 days notice of hearing and 2 days notice of time and date.

The Commitment Hearing

- Standard of proof is "Clear and Convincing Evidence."
- Criteria for Commitment: the person must meet the definition of mental illness, chemical dependency or developmental disability.
- Commitment must be the least restrictive alternative.

Commitment Hearing

- Persons committed to community based program if due to inability to provide needs or property damage.
- Community based program may include inpatient at community hospital for clause 2 and 4 only.
- Initial commitment period is 6 months.
- Commitments to State Operated Services should be ordered to the Commissioner of Human Services.

Procedures Upon Commitment

- The court issues a warrant or an order committing the patient to treatment facility.
- Head of treatment facility must retain duplicate of warrant and endorse receipt of warrant or acknowledge receipt of order. Filed with committing court.
- Commitment documents must be promptly provided to treatment facility.

Release Before Commitment

- Two less-restrictive alternatives:
 - Continuance for Dismissal
 - Up to 90 days
 - With or without findings
 - Stayed Commitment Order
 - Up to 6 months, additional 12 months after hearing. Only for a maximum of 18 months.
 - With findings only.
 - If stayed for more than 14 days, need written plan of services.

Community-based Treatment

- Community-based treatment is a form of less restrictive treatment
- An order must include the following:
 - A written plan of services,
 - A finding that treatment is available and paid for,
 - Conditions patient must comply with to obtain early discharge,
 - Consequences for noncompliance, including commitment to another setting (dual commitment)

Commitment Appeal

- Any court order must be appealed within 60 days of filing order.
- Court of Appeals must hear within 90 days of filing.

Continued Commitment Hearing

- Court must hold review hearing within 14 days after receiving report and before commitment expires.
- Right to independent examiner.
- The court may extend for up to 14 days for good cause at 6 month hearing.
- No extension possible for 18 month hearing.

Standard for continued Commitment

- The patient continues to be mentally ill, chemically dependent, or developmentally disabled.
- Do not need to show recent attempt to harm self or others.
- Must find the patient is likely to harm self or others unless committed.

Length of Continued Commitment

- For MI and CD commitments may extend for up to 12 months.
- A new petition is required at 18 months. Same standard for continued commitment.
- For DD commitments, continued are for an indeterminate period. Must review need for care annually.

Judicial Review [.17]

- Patient committed or any interested person can request a review of commitment.
- Must be held within 14 days of filing, extended 30 days for good cause.
- The court must give 10 days notice to patient, patient's attorney, county attorney, person who filed original petition, others the court directs.

Discharge (off commitment)

- Committed person must be discharged when:
 - head of treatment facility certifies the person is no longer in need of care and treatment; or
 - any period of time specified in the commitment order, whichever occurs first.
 - According to the Supreme Court Rules, the court must order a discharge of the commitment and discharge the court-appointed attorney.

Discharge (cont.)

- One week prior to discharge, head of treatment facility must notify county and next of kin of discharge by certified mail.
- Notice includes:
 - date of discharge
 - date, time and place of discharge planning meeting
 - reminder that patient will be present at meeting and family may attend

Notice of Discharge

- Notice of discharge by treatment facility to:
 - county attorney
 - patient's attorney
 - patient's physician
 - committing court

Aftercare Services

- County agency and treatment facility must establish continuing aftercare plan, including:
 - medical and psychiatric treatment
 - nursing care
 - vocational assistance, and
 - other needs.
- Designated agency must also provide case management.

Written Reports to the Court

- First Report; more than 60 days, but less than 90 days after order for commitment.
- Continued Commitment or Final Discharge Report.
- ** If the patient has been provisionally discharged from a treatment facility, the report shall be prepared by the designated agency.**

Written Reports to the Court

- If a patient remains hospitalized more than 60 days, a written report must be filed with the court no less than 60 days and no more than 90 days after the date of commitment.
- Report must include:
 - -A) Diagnosis of patient
 - -B) Anticipated discharge date
 - -C) Individualized treatment plan

Written Reports to the Court

- -D) Detailed description of discharge planning and aftercare plan
- -E) Whether patient is in need of further care and treatment and the treatment facility which is needed.
- -F) Whether patient satisfies statutory requirement for continued commitment
- -G) Whether NM need to be administered and whether the patient can give informed consent for NM.

Final Discharge/Continued Commitment Report

- Report has same requirements as 60-90 day report.

Consequences for Missing Reports

- “If no written report is filed within the required time,...the proceedings must be terminated by the committing court and the patient discharged from the treatment facility.”

Provisional Discharge

- Is a less restrictive alternative to in-patient treatment.
- Will allow a person to be discharged from in-patient setting to a community placement.
- Keeps the commitment in place.
- Allows the person to be returned to in-patient if necessary.

Provisional Discharge Plan

- Must have a meeting to determine needs and develop written plan.
- Plan must specify services/treatment to be provided, by whom and how often.
- Precise goals patient must achieve for final discharge.
- Conditions the patient must follow and any restrictions and grounds to revoke.

Provisional Discharge Plan

- Must include expected period of PD. Cannot be longer than commitment is for.
- Must be reviewed on a quarterly basis by patient, case manager and other appropriate persons.
- Copy to patient, patients attorney and county attorney and case manager.
- Terminates on date specified unless revoked or extended.

Revocation of Provisional Discharge: Procedure

- “Any Person” may request revocation.
- Designated Agency commences revocation by “giving or sending” written notice.
- Within 48 hour of giving notice, designated agency must file notice and report setting forth facts that:
 - support revocation.
 - Demonstrate revocation is LRA.
 - Show specific efforts were made to avoid revocation.

Revocation of Provisional Discharge: Standard

- A) Patient violated material conditions of PD and violation creates need for return to a more restrictive setting.
- B) Serious likelihood that the safety of patient or others will be jeopardized, either through patient’s need for food, clothing, shelter or medical care are not met, or not met in near future or patient has attempted or threatened to seriously physically harm self or others; and
- C) *Revocation is least restrictive alternative available.*

Non-emergency Revocation of Provisional Discharge: Judicial Review

- Patient may file petition and affidavit within 5 days of receiving notice to contest revocation.
- Court must review petition and determine whether a genuine issue exists as to the propriety of the revocation.
- Burden of proof is on designated agency.
- Patient is not returned to facility until court decides and issues an order.

Emergency Revocation of Provisional Discharge: Hospitalization prior to hearing

- County may request immediate return to facility.
- If court orders immediate return, patient is returned to facility, patient must file petition and affidavit to contest revocation within 14 days.
- Court must find serious likelihood that the safety of the patient or others will be jeopardized, in that
 - patient’s need for food, clothing, shelter, or medical care is not being met, or will not be in the near future, or
 - the patient has attempted or threatened to seriously harm self or others.

Revocation of Provisional Discharge: Hearing

- Court must hold a hearing within 3 days after patient files the petition.
- Review hearing may be extended additional 5 days.

Modification and Extension of Provisional Discharge

- Provisional discharge may be modified upon agreement of the parties.
- Provisional discharge may be extended but not beyond the term of the commitment.
- Notice of the expiration of the provisional discharge must be given to the committing court.

Early Intervention: Preliminary Procedures

- Early Intervention process requires the same due process protections as Civil Commitment process.
- County may opt out.

Early Intervention: Hearing Procedures

- Hearing must be held within 14 days of filing the petition, additional 30 days with good cause.
- Notice of hearing at least 5 days prior to hearing, 2 days of time and date of hearing.
- Failure to appear.

Early Intervention: Criteria

- Patient is mentally ill
- Patient refuses to accept appropriate mental health treatment
- Patient's illness is manifested by "grossly disturbed behavior or faulty perceptions"
- AND

Early Intervention: Criteria (con't.)

- Either:
 - The grossly disturbed behavior or faulty perceptions interfere with ability to care for self and, proposed patient, when competent, would have chosen substantially similar treatment
 - or
 - Patient received court-ordered commitment twice in previous three years and
 - and

Early Intervention: Criteria (Cont.)

- The patient is exhibiting similar symptoms or behaviors which led to one or more prior commitments and is expected to deteriorate to that point.
- May use if a pregnant woman has engaged in excessive use, for non-medical purpose, of controlled substances or their derivatives, alcohol, or inhalants that pose a substantial risk of damage to the brain or physical development of the fetus.

Early Intervention: Criteria

- None of the following constitute refusal to accept appropriate MH treatment:
- Reasonably disagrees with dose or type of med.
- Person has made a good faith effort to follow an alternative treatment plan, including an advance directive;
- an inability to access appropriate treatment due to inadequate health care coverage or;
- because the provider only accepts committed patients.

Early Intervention: Treatment Alternatives

- Short-term hospitalization not to exceed 21 days. (used to say Community based treatment but not anymore)
- Early Intervention order cannot exceed 90 days.
- 2014 Amendments added ACT, crisis assessment and stabilization, and partial hospitalization as alternatives.