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MINNESOTA

National Alliance on Mental Illness

Understanding the Minnesota Civil Commitment Process

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INTRODUCTION

Mental illnesses are biological brain disorders and can disrupt a person's thinking, feelings, mood, ability to relate to others and daily functioning. Most people with serious mental illnesses live successfully in their communities as long as they have access to appropriate supports and treatment.

Sometimes people stop taking their medications or the medication stops working. In addition, some individuals with mental illness have anosognosia, meaning that they do not believe they have a mental illness. They do not acknowledge their symptoms or have insight into their illness and thus do not think they need treatment. All of these things can result in people with mental illnesses not being able to care for themselves or becoming a danger to themselves or to others.

In these situations, it may become necessary to have a court order the person into treatment. The process of obtaining a court order is called the Civil Commitment process. It has two main purposes:

- To treat persons with mental illnesses when they are unable or unwilling to seek treatment voluntarily.
- To protect the person with mental illness and others from harm due to the illness.

The Civil Commitment process involves the legal system and can be confusing or intimidating for individuals with mental illness and their families. Civil commitment can be a very emotionally difficult path to take and is viewed as a last resort, when nothing else has worked.

Recent discoveries have shown that mental illness is very treatable with medications and other therapies. At times, however, the medications may not work well enough or people with mental illness may refuse to take their medications or see their doctor or therapist. When this happens, the person may become isolated, lose their job or even their housing. In some situations, the person may lead a life that involves homelessness, jail or prison. Sometimes commitment is the only way to get a loved one back to functioning better.

This booklet is designed to help individuals and families understand the process. First, this booklet provides suggestions for handling mental health emergencies before the commitment process begins. Then, it outlines the steps involved in the Civil Commitment process. Next, it explains what happens if a person with mental illness is committed and discusses alternatives to involuntary commitment. Finally, there is a list of county-specific commitment information and additional resources at the end of this booklet. Throughout the booklet, people who have committed loved ones provide advice and comments about the Civil Commitment process. It is not an easy process and families need to understand the process and be strong advocates for treatment.

“While initially my son was upset with the family over his commitment, in the end he was thankful. He now lives in an apartment with community supports and is working. Without the commitment I don’t want to think about where he would have ended up.” CL

MENTAL HEALTH CRISIS

A mental health or behavioral emergency often triggers the concern of family members or friends who may then consider Civil Commitment for the person with mental illness. Knowing how to handle these emergencies requires preparation. Having information about emergency rooms and the mental health examiners who handle emergencies will better prepare you for helping a person with mental illness in managing his mental health crisis.

How do I get help quickly?

If you are worried that the person with mental illness is in crisis or is nearing a crisis, there are a number of ways that you can seek help. Before choosing which option to pursue, assess the situation. Consider whether the person is in danger of hurting himself, others or property. Consider whether you need emergency assistance, guidance or support. Depending upon the situation, choose one of the following options:

- If you do not believe the person is in immediate danger, call a psychiatrist, clinic nurse, therapist, case manager or family physician who is familiar with the person’s history. This professional can help assess the situation and provide advice for further action. The professional may be able to obtain an appointment or may be able to admit the person to the hospital. If you cannot reach someone and the situation is worsening, do not continue to wait for a return call. Take another action, such as calling a crisis team or the police.
- If you think the person with mental illness needs emergency medical or psychiatric attention, drive her to the nearest emergency room, but only if you can do so safely. If you do not think that you can do it safely, call the crisis team or the police.
- If you want advice, support and to have someone assess the situation, contact your county’s crisis team. Many teams are mobile and will come to a person’s home. Even if the team doesn’t come out to the person’s home, they can provide advice and support. If they do come out, they can assess the person, offer options, negotiate with the individual and sometimes can provide a nurse who can order a “hold.” They can also provide continued assistance for several days if needed.

Some of the teams are not heavily staffed and so they may refer you to the police or another agency. If the situation changes, don’t be afraid to call the crisis team back. They may not have been able to come out the first time you called, but may be free later.

- If the situation is life threatening or if serious property damage is taking place, call the police for assistance. When you call the police, tell them your loved one is experiencing a mental health crisis, and explain the nature of the emergency. Telling the police that it is a crisis involving a person with mental illness increases the chance that they will send an officer trained in working with persons with mental illnesses. You can also call the police if you need help transporting the person to the hospital during a crisis.

It is important to note that depending upon the police officer involved, he may bring your loved one to jail instead of to the emergency room. Be clear about what you want to have happen.

When giving out information about a person in a mental health crisis, always be very specific about the behaviors you are observing. Instead of saying “my son is behaving strangely” you might say, “my son hasn’t slept in three days, he hasn’t eaten anything substantive in over 5 days, and he believes that the FBI is transmitting messages through his fillings.” Report any active psychotic behavior, huge changes in behaviors (such as not leaving the house, not taking showers), threats to other people, increase in manic behaviors, or increase in agitation (pacing, irritability). You need to describe what is going on right now, not what happened a year ago. Finally, in a crisis situation, when in doubt go out. Do not put yourself in harm’s way.

HOSPITALS AND EMERGENCY DEPARTMENTS

Every hospital and emergency department has their own set of guidelines for responding to a mental health crisis. Some hospitals have markedly improved their preparedness and ability to handle mental health or behavioral crises. While one may not be located near you, knowing what the best hospitals do in these situations will help you know what to ask for. You may want to talk ahead of time to the psychiatrist, other mental health professionals or other families about which hospitals in your area have the best reputation for dealing with a mental health crisis.

At the emergency room, immediately inform the hospital staff that your loved one is in a mental health crisis. Alerting the hospital staff to the nature of the crisis can speed up the response of trained mental health professionals. The staff will then know to use mental health evaluation forms and to follow the correct assessment and admission protocols. Clearly state how the person is in danger and describe the behaviors.

Find out if a separate emergency room is available for individuals experiencing a mental health crisis. A room separate from the standard, often chaotic emergency room provides a less stressful setting where the person in crisis can wait. Some hospitals have these and people report that it makes a difference.

Minnesota requires doctors and other examiners at the hospital to make an honest

effort to obtain information from the person who brings a potential patient to any treatment facility. Be prepared to provide the following information about the person in crisis to the medical examiner:

- Psychiatric history
- Past behaviors and treatment including current list of medications and dosages
- Knowledge and direct observations of the recent behavior that caused concern. It can be helpful to write down your observations leading up to and during the crisis – be brief and concrete. You must provide detailed information on how he is not able to take care of himself, any suicide threats, threats to others, new behaviors, etc.
- Current mental health providers and insurance information about the person

It is a good idea to compile this information before an emergency occurs. Write it down and keep it easily accessible so that you are not pressed to remember the information during a crisis.

Be prepared for a long wait in the emergency room. NAMI has heard that individuals with mental illness and their families have waited eight or more hours. It is important to note that bringing someone to an emergency room does not necessarily lead to an admission into the psychiatric unit.

Don't be surprised if the emergency room physician asks you to assess how dangerous the individual is to himself or others and asks if you would be able to take the person home. Be prepared to hold your ground if you really believe the individual needs to be hospitalized. Don't take someone home if you don't believe you can reasonably keep him – or others – safe.

Sometimes hospitals and doctors do not share much information with the family, especially if the person is admitted to the hospital. There are two things to remember. One, Minnesota law was changed in 2006 to allow basic information to be shared with someone providing care or directly involved with an individual with mental illness. You must request the information in writing and have your involvement verified. Two, if your loved one refuses to agree to release even basic information you can still provide information to the hospital or doctor that may help them assess the situation and provide better treatment. You can also ask broad questions such as “if I had a relative with schizophrenia what medications would be recommended if X medication wasn't working?”

Standards for Commitment

A person cannot be committed for treatment against his or her will unless he or she meets certain legal standards. Courts will make an involuntary commitment order only if:

- The person has been diagnosed with a mental illness (an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception,

orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand);

AND

- There is a strong likelihood that the individual will physically harm herself or others. Signs of such a possibility might be shown by a failure to obtain food, clothing, shelter, or medical care as a result of the illness, taking into account the possibility of anosognosia, or the individual's unawareness of her own symptoms;

OR

- A recent attempt or threat to harm physically herself or others;

OR

- It is more probable than not that the individual will suffer harm, serious illness or significant psychiatric deterioration as a result of not receiving medical care;

OR

- The person exhibits voluntary and purposeful conduct involving significant damage to substantial property;

AND

- There is no less restrictive way to get treatment for the person.

In 2001, the Minnesota Legislature changed the commitment law by removing the words "imminent" or "immediate" from the statute in order to allow courts or families to intervene earlier when a person does not recognize his mental illness and needs treatment to prevent further deterioration or crisis. As soon as a danger is posed to the person with mental illness or others around her, the Civil Commitment process can be started.

You should know that the commitment law is for people ages 18 and over. Minnesota laws are confusing about how commitment applies to teenagers ages 16 and 17. Some counties apply the commitment law to teenagers at these ages, providing all the due process requirements. Other counties may allow parents to consent to treatment, use the juvenile courts or even use the CHIPS petitions for 16 and 17 year olds who are refusing treatment. Because the practice varies so much, check with your teen's treatment facility and the county.

STEPS IN THE COMMITMENT PROCESS

There are six major steps in the commitment process:

1. Initiating the process and the prepetition process (there are two ways, one is for emergencies)
2. Beginning the petition process
3. Conducting the examination
4. Holding the preliminary hearing
5. Holding the commitment hearing (trial)
6. Determining the result

“Fear of anger or retaliation often hold people back from committing a family member, but it shouldn’t. Proper treatment will help them understand it in the long run.” –MG

Step 1: Starting the process

The commitment process can be initiated in either of two ways:

- By obtaining an emergency hold,
- By contacting the proper agency for a prepetition screening.

Emergency holds are not required, but prepetition screenings are required. Each process is described separately. If no emergency hold is required, skip down to the next section.

Emergency holds

If you are in a situation where you believe something dangerous is about to happen to you, to others or to the person with mental illness, call the police department or the local crisis intervention unit immediately.

Sometimes a person with mental illness creates such a risk of injury that he must be held in custody before a petition for commitment can be filed or before the prepetition screening team (PST) can review the matter. In these cases, an “emergency hold” can be placed to temporarily confine the person in a secure facility. Emergency holds last for 72 hours each (not including weekends and holidays). An emergency hold does not necessarily result in starting the commitment process. It only serves as a way to assess the individual to determine if commitment is necessary.

An emergency hold can be initiated by one of these three:

- a physician or doctoral level psychologist
- a peace or health officer
- a court

What is a physician's emergency hold?

An examiner, who is a physician or doctoral level psychologist, can place the person with mental illness on a "physician's hold." In this case, family, friends, or a member of the community brings the person with mental illness to a secure treatment facility (such as a hospital) because they are concerned about his recent behavior. A secure treatment facility is a place that will hold and treat the person with mental illness even if he does not agree to treatment.

To obtain a physician's emergency hold, there must be a statement from the examiner that is no more than 15 days old that says the person has a mental illness and must be detained to prevent injury to himself or to others. In addition, the head of the secure treatment facility must give approval before he can be confined there. A person can only be held for 72 hours, not including weekends or holidays. To hold the patient for more than 72 hours, a petition for Civil Commitment and a petition for a court hold must be filed before the period ends.

What is a peace or health officer emergency hold?

A peace or health officer may take a person with mental illness into custody and bring her to a secure treatment facility for emergency confinement if the officer believes that the person presents a danger to the public. The peace or health officer has to fill out an application for admission. The officer will use this application to describe his belief that the person is dangerous to herself or to others and needs to be confined. A peace or health officer hold lasts for up to 12 hours and is used to get the person to a hospital emergency room.

What is a court emergency hold?

Judges can also order a person with mental illness to be held in a secure treatment facility. This is called either a "court hold" or a "judicial hold." A judge can issue a judicial hold in three situations:

- When the judge sees evidence that the person with mental illness will hurt herself or others if not confined;
- When the person with mental illness did not appear after the judge told her to attend an examination or hearing; or
- When a person with mental illness is already under an emergency hold and a Civil Commitment petition is filed. In this situation, the court hold is used to keep the person with mental illness in the secure facility after the 72-hour period is over.

An initial hold lasts for only 72 hours. However, there will be a hearing before the 72-hour period is over. The judge can then order the person with mental illness to be confined until the end of the commitment process.

What are the rights of the person with mental illness under an emergency hold?

The person with mental illness has specific rights under an emergency hold. The person must be: (1) told of her right to leave after 72 hours, (2) told of her right to a medical examination within 48 hours of confinement, and (3) told of her right to accept treatment voluntarily.

The person with mental illness also has the right to ask the court to be released before the 72 hours is over. If the person asks to be released, the court will hold a hearing as soon as possible to determine if the emergency hold is actually necessary. If the court decides to release her, it must attempt to notify everyone who was named in the emergency hold application. The person also has the right to receive a copy of the written statement that authorized the emergency hold.

Prepetition screening

If an emergency hold is not necessary, you can begin the Civil Commitment process by contacting the appropriate human services department in the county where the person with mental illness lives or is currently staying. (Contact information by county is listed at the end of this booklet.) The county will assign a pre-petition screening team who will assess whether the person with mental illness meets the requirements for Civil Commitment.

Since the individual with mental illness is often angry at whomever starts the Civil Commitment process, try to have a professional, such as the doctor or hospital administrator, initiate the process. It is better for the family to align with their loved one against the illness rather than appearing to align themselves against their loved one and thus be labeled the “enemy.” This does not mean that you should oppose a commitment.

The screening team gathers information about the person’s condition in a process called the prepetition screening investigation. The screening team can talk to family members, hospital staff, insurers, psychiatrists and others who might have information about the person’s health and behavior. If you do not hear from the screening team, you can contact them in order to tell them what you know.

“Be slow and methodical in what you say. Be accurate and honest. It helps to bring in what you want to say in writing.” MG

As part of the investigation, the screening team must:

- Interview the person with mental illness.
- Identify and investigate the alleged behavior that justifies commitment.
- Identify and explore alternatives to commitment and explain why these alternatives may or may not be appropriate.
- Gather other information about the person with mental illness, such as his medications, his ability to consent to treatment, the effectiveness of past treatment, and his wishes about treatment if he has an advanced health care directive.

- Contact the person's insurance company to talk about paying for treatment and finding doctors and treatment facilities on the plan.
- Provide notice about rights, the commitment process, and the legal effects of commitment to the person to be committed.

The screening team representative must say who she is and why she is talking to you. Write down her name and other information. Anything you tell the screener may be shared with others involved in the proceedings, including the person with mental illness, the attorneys, the court-appointed doctor and county case managers. Your statements may also be used in the prepetition screening report and in court.

The screening team will share what it has learned once it has completed their investigation. The team determines whether they think the person with mental illness should be committed or receive another type of treatment. The law says that the individual must receive the least restrictive treatment alternative.

If the screening team recommends commitment, the team sends a written report to the county attorney. If the screening team does not recommend commitment, the person who requested the screening may appeal the decision. If the decision is appealed, the team prepares a report for the county attorney to review. The county attorney decides whether to file a petition.

The petition for commitment usually needs to be supported by the report of a licensed physician, psychologist, or advance practice nurse in mental health who has examined the person with mental illness within 15 days of the filing of the petition. The examiner must provide a written statement describing the person's diagnosis and behavior and stating that the person needs to be committed. This is called the "examiner's support statement" and becomes part of the prepetition screening report provided to the county attorney. This is separate from the examination and report prepared by the court-appointed examiner during the court proceedings.

What is the family's role during the prepetition process?

While families have varied experiences with the process, they seem to agree with what one family member said:

"Be assertive. You might expect the process to take over once you get medical or hospital staff involved, but it will not. You have to be involved and pushing at every step. Commitment is not a terrible thing to do to your loved one. You are trying to protect them and keep them safe." ES

During the prepetition process, the screening team will ask you basic questions about the person with mental illness and why he poses a danger to self or others. The team will also want to know about other people they could contact about the

behavior, such as family members (spouse, parents, brothers, sisters, and children), and other people who have witnessed his behavior. Have names and phone numbers for these people available.

The screening team needs specific examples of problem behaviors to support a petition for commitment. Be prepared to tell them as many facts as possible. If you can, write down a detailed log about the person's behavior and life: When did the problem behavior occur? Who else was there? What happened? How many times has this happened in the past?

Having this information written down will make it easier for you to remember events later on, especially if you testify in court during commitment proceedings. Without notes, it might be hard for you to remember details about who was there, what everyone said and what happened. You need to be able to state why a commitment is necessary. Tell the team about alternatives that have been tried and why the person needs treatment.

Here are some examples of questions the screening team may ask you about the person with mental illness:

Background information:

Name, age, current location/address, social security number, and names of family members.

Employment history:

Currently employed? When did she last work? How has her illness affected her ability to work?

Financial information:

Does he pay rent and other bills? Does he have insurance?

Self-care:

Does she shower, change clothes, and wash clothes?

Diet:

Is the person eating? Has he lost or gained weight? If so, how much and over how much time?

Overall health:

Does she have health problems in addition to her mental illness? What are they?

Housing:

Where is he living? How long has he lived there? Is it a stable living environment?

Drug use:

Does she use drugs? Has she admitted to drug use? Which drugs does she use? How much and where does she get it? How does she pay for it? Have you seen the person high or intoxicated? If so, when?

Weapons:

Does he have access to a weapon?

Treatment history:

Where did she receive treatment in the past (list facilities and treatments with year and month of treatment)?

Police record, court involvement, accidents:

Has he been ever been arrested, spent time in jail or prison? List dates and charges.

Behavior: Has he made verbal or physical threats? Is he verbally or physically abusive? Has he mentioned suicidal thoughts or plans? Has he attempted suicide? Has he acted irrationally?

Diagnosis/Symptoms:

What is her diagnosis? Why do you believe she has a mental illness? What signs and symptoms do you see?

Medical care providers:

Does he have a therapist, psychiatrist or other doctors? Who are they and how can they be reached?

Mental health treatment:

Has she been hospitalized or received outpatient care? If so, when (year and month) and where?

Medication:

What medications have been prescribed? Does he take the medication as prescribed? What medications was he on in the past?

It is OK if you can't answer all of these questions. It would be difficult to provide information on all of these categories.

“The prepetition screener is the focal point in the process. It is very important to work with that person closely and find out as much as you can from her.” DH

In some counties if the family member is living in the community or your home, and you are the petitioner, you should not be surprised if you are asked to arrange for an examiner to assess the individual and prepare a statement for the court. You can talk to the person's family doctor, psychiatrist or certified nurse practitioner.

Step 2: The petition

After the pre-petition screening team reviews the situation, a “Petition for Civil Commitment” must be filed to start the actual Civil Commitment process. The person who files this petition is called the “petitioner.” The person who is the subject of the petition is called the “respondent.”

According to the law, anyone who is familiar with the person’s behavior can be a petitioner. The petitioner does not have to witness the person with mental illness’s behavior firsthand, but must have facts to support what is said about the person. For example, a petitioner cannot simply say that the person with mental illness seems to be unable to take care of himself or seems to be dangerous. The petition must state actual events that show the person with mental illness is dangerous or cannot take care of himself.

The petitioner is often the head of a treatment facility where the person with mental illness is being treated, but the petitioner can also be a family member, friend or someone in the community. However, we recommend that family members not be the petitioner. The petitioner does not always have to fill out and file the petition on his own. The person who prepares the actual petition may vary from county to county. In Hennepin County, for example, people who believe an individual with mental illness should be committed can visit the county attorney’s office and an attorney will help prepare the petition. In other counties, the pre-petition screening team will prepare the petition if they support the petition.

Remember, the pre-petition screening team can only prepare the petition using information given to them during the investigation; they cannot start their own petition. Treatment facilities may be responsible for preparing their own petitions. In hospitals, the social worker is usually the person who represents the hospital at the commitment hearing.

The petition contains several items. One is the pre-petition screening team’s report. Another is an examiner’s report. A qualified psychiatrist, psychologist or advanced practice nurse in mental health must examine the person with mental illness and make this report. This exam must take place no more than 15 days before the petition is filed and must support Civil Commitment. The psychiatrist, psychologist or advanced practice nurse prepares a statement that contains a diagnosis of the person with mental illness, facts to support the diagnosis, a recommendation for Civil Commitment, information to support Civil Commitment and the date of the examination.

If the petitioner cannot get the examiner’s report, he can include documents that show why he could not get the report. For example, documents that show the person with mental illness refused to cooperate with the examination.

Who can attend court proceedings?

Except for the examination, court hearings are public proceedings and anyone may attend. The court can exclude people who are not necessary to the proceeding. Generally, only those who receive notice of the hearing or are contacted by the attorneys will attend. You can contact the clerk of court or the county attorney to determine when and where the hearing will be held. It is a good idea to attend the hearings.

Can you see or talk to the person with mental illness during the court proceedings?

If the person with mental illness is on a court hold, the police will bring him to the hearing. The courtroom deputy is in charge of supervising and monitoring him. If the person with mental illness is on a court hold in Hennepin County, you will not be able to visit with him during the hearing. Families are free to sit with the family member before and after the hearing. It is important to be supportive throughout the entire process, and waiting with the person with mental illness for the hearing to start and after hearings until the police officer returns him to the hospital is a simple gesture the person will probably appreciate. It is also valuable for preserving the relationship. If the person with mental illness is being held in a facility during this process, contact the treatment facility where he is being held to arrange a visit.

What are the rights of the person with mental illness?

After the petition is filed, the court appoints a lawyer to represent the person with mental illness at no cost to the person or her family. These lawyers have been given additional training in mental health issues. Otherwise, the person with mental illness may hire any lawyer she wants.

Remember, the county attorney's office also represents the petitioner and tries to have the person with mental illness committed. The defense lawyer only represents the wishes of the person with mental illness. If the person with mental illness does not want to be committed, the defense lawyer must use the evidence to argue that he should return to the community.

The court-assigned attorneys for the person with mental illness specialize in these types of cases, and will do just as good a job as a hired lawyer or attorney. The court-assigned attorneys are also free.

“The public defender must represent the wishes of the person who is being committed. This may seem very frustrating since your loved one's wishes may not coincide with her best interests.” -DH

Step 3: The examination

After a petition is filed, a licensed psychologist or psychiatrist, called a “court appointed examiner” must perform another examination. The examiner provides the court with an independent assessment of the need for commitment. This examination is required by law.

The person with mental illness will be given a “summons” to attend this examination. A summons is a written notice given to the person with mental illness and says she must show up to be examined. If the person with mental illness does not show up, or the person is on a hold, the court can have a peace officer find the person and bring her in to be examined.

A person with mental illness must be examined by the court’s examiner first, but she can also choose any examiner she wants to perform a second separate examination. Only the county attorney and the lawyer of the person with mental illness can attend these examinations. Family members are usually not allowed to attend.

Step 4: The preliminary hearing

The preliminary hearing is a legal meeting with the judge and lawyers to discuss several matters before the trial. If there is a settlement, the judge will look at the settlement. If the person with mental illness is confined by an emergency hold, the judge will decide if he should remain confined until the end of the trial. If there is no settlement, the two sides will pick a time to have the trial. Families should attend the preliminary hearing even if they are told that it is not necessary, because sometimes a resolution is achieved at the preliminary hearing.

Step 5: The commitment hearing

“It is difficult to see someone that you love act psychotic in front of other people. It fosters a desire to protect, even though you know that the commitment is for the best.” – DH

A commitment hearing is a civil trial before a judge. The commitment hearing is usually held in a courtroom setting and follows formal court procedures. It must be held within 14 days of the filing of the petition, but the hearing may be extended an additional 30 days. Some counties allow the hearing to be held at a hospital or via a teleconference. The person, if on a hold, is usually brought to the hearing by the sheriff’s office.

The burden of proof is on the county attorney, who must prove that the person has a mental illness and meets all the requirements for commitment. The lawyer representing the person with mental illness only has to show the judge that there is not enough evidence to commit the person. The judge will listen to both lawyers, look at all the evidence, and make a decision.

You may be asked by the county attorney to testify at the trial. The judge needs to hear evidence of behaviors showing mental illness, behaviors that demonstrate an inability to care for self, or danger to self or others. The attorneys understand that you are being asked to talk about a family member's or friend's behavior in front of the person, and that this can be very stressful.

Generally, you can only testify about things that you have seen or heard directly, not what you learned through talking to other people. Be sure and dress appropriately for court, respond directly to the questions asked and follow the directions of the judge. The county attorney will usually talk with you before the hearing.

“Even though it is a civil court, it can feel like you are in a criminal arena. The judge even lectured my son ‘not to do that again.’” -MG

Step 6: Determining the result

If the judge decides that there is enough evidence, the person with mental illness will be committed. If the judge decides that there is not enough evidence, the individual with mental illness is free to return to the community.

“Had we known the system was in place to find help, we would have gotten our son into the hospital sooner.” - DH

CONCERNS AND QUESTIONS ABOUT COMMITMENT

You may have questions and concerns about the commitment process. Here are some typical concerns and answers to guide you.

How long does the initial commitment last?

It cannot last more than six months without a report being filed and a hearing held. However, since people rarely stay in the hospital that long, commitment includes both inpatient and outpatient care, under a “provisional discharge.”

Each committed person receives a county case manager who provides services and monitors him. The case manager, treatment facility or treating physician can discharge him whenever she believes the patient is ready. Under a provisional discharge, if the person with mental illness does not follow the conditions for his discharge (such as taking medications, visiting with the case manager, etc.) the provisional discharge can be revoked and the person returned to the treatment facility.

What happens if people need treatment beyond six months?

It is called continuing commitment. Occasionally people are not ready to be released after six months. If the case manager believes that the person continues to be at risk after being under commitment for six months, or believes that the person will likely stop treatment as soon as the commitment expires she can recommend an extension of the commitment.

In a hearing for continued commitment, the patient would have the same rights as he did in the first proceeding. This proceeding can extend the commitment up to an additional twelve months. However, the case manager can release the person with mental illness at any time during this extended period if she feels that the patient is ready.

If you feel that an ongoing commitment is needed to protect your family member, be sure to let the case manager know at least one month before court jurisdiction expires. Commitments can be continued for up to twelve months after that through a “recommitment,” but the petition must be filed well before the existing court jurisdiction expires.

When is commitment reviewed?

Once committed, the person with mental illness has the right to request that the court discharge her from commitment if she believes treatment is no longer necessary. The person with mental illness can contact the court about this at any time. Her attorney will help file the petition to review. The person with mental illness has the right to appeal her initial confinement.

Who pays for commitment?

Just because you act as the petitioner does not mean you have to pay for the person’s treatment. Treatment costs may be paid by the county, private insurance, government programs or the individual with mental illness.

Although you should talk to the hospital staff or the county case manager about your specific situation to determine the cost and payment of care, here are a few general guidelines to keep in mind.

Generally, who pays depends on where the care is given and what programs people are eligible for. If the patient is covered by MinnesotaCare or a private insurer, the insurer is billed. If the person is between the ages of 18 and 65 and has no insurance, the person is ultimately responsible for the cost of treatment. In these cases, the person is usually committed to a state facility and the Department of Human Services bills the person based on her ability to pay. If the person is unable or unwilling to pay for the treatment, however, the state can collect from the individual’s estate only after death.

ALTERNATIVES TO COMMITMENT

The judge might find, or the parties might agree, that the person with mental illness would be served best by a treatment option less restrictive than commitment. In addition to continuances and commitment stays (mentioned above in step 4), there may be other alternatives. Some of these alternatives are discussed below.

Community-based treatment

Sometimes it is possible to commit a person to a community-based program (typically a residential program, sometimes a day program) instead of involuntary commitment to a regional treatment center or hospital. Generally, community facilities require a dual commitment with the Commissioner of Human Services before they will accept a person on this basis. In this case, a written plan of services must be developed with conditions that must be complied with and consequences for non-compliance.

If you want the person with mental illness to receive community-based treatment, the agency should be involved in the settlement agreement negotiations. Find out whether there are places available in the program before you suggest this alternative.

Continuance for dismissal

Sometimes the parties decide that the commitment hearing should be delayed so that the person with mental illness can voluntarily participate in a treatment plan under specific conditions. The court may continue a case for dismissal for up to 90 days, after which the petition is dismissed. By agreement of the parties, this can be extended for longer than 90 days.

Stay of commitment

A stay of commitment means that the court will not enforce the commitment as long as the person participates voluntarily in a treatment plan. If he does not follow the rules of this treatment plan (for example, staying clean if there is a drug problem, taking medication, or attending groups), then the court ordered commitment begins.

The court can stay a commitment order for up to six months and renew it for an additional 12 months if necessary. In this case, a written plan of services must be developed with conditions that must be complied with and consequences for non-compliance. Do not be disappointed by this result. In a way, a stay of commitment extends the timeline for care.

Early Intervention Commitment

Early Intervention Commitment is less restrictive than Civil Commitment, but it is still a form of involuntary treatment. Under this procedure, a person who has a mental illness can be involuntarily treated even if she does not meet the commitment standard. Early interventions also require the prepetition screening process.

To order an early intervention, there must be clear and convincing evidence that:

- The person has a mental illness; and
- The person refuses to accept treatment; and
- The person's illness is demonstrated by extremely disturbed behavior or faulty perceptions.

In addition to these criteria, the court must also find EITHER

- That the behavior or faulty perceptions interfere with the person's ability to care for himself and that person, when competent, would have chosen very similar treatment.

OR

- That the person received court-ordered treatment twice in the last three years, and the person is showing similar symptoms, which led to one or prior commitments and is expected to deteriorate to that point again.

Early intervention treatment must be less restrictive than commitment. For example, the court could order day treatment, medication monitoring, or 21 days of hospitalization. Early intervention orders cannot last more than 90 days.

The rights of the person with mental illness are the same under early intervention commitment as they are under standard Civil Commitment procedures. She has the right to an attorney, the right to a second examiner, the right to present witnesses, the right to a full court hearing and the right to appeal.

This is still a relatively new law and has not been used very often. Some counties state that the lack of openings at treatment facilities and hospitals make it more difficult to use. Other counties state that they don't use it because the criteria is nearly the same as under regular commitment, but the short time for treatment makes it not worth the hassle. And of course some counties are simply not aware of the law. You may need to be a strong advocate if you go this route.

Advance Health Care Directives

Advance Health Care Directives (AHCD) are important for all individuals over 18 years of age for when they cannot speak for themselves, especially in the case of severe mental illnesses. An AHCD allows individuals to appoint an agent who has power of attorney to make care and treatment decisions on their behalf, and give instructions about their health care wishes, so a person with mental illness could plan ahead for future anosognosia or psychosis. Health care directives, however, are only useful for persons who have repeated the process.

GLOSSARY

These are terms that you should be familiar with:

County Attorney

The county attorney represents the petitioner. The commitment laws anticipate that the county attorney will handle all of these cases. Be sure to contact the office in advance of the hearing to let them know of your concerns, whether you plan to attend the hearings and whether or not you are the petitioner. The county attorney can discuss the case and alternatives with you, but cannot share any medical records without a release from the person.

Examiner

The court is required to maintain a list of examiners, psychologists and psychiatrists who meet the required legal standards to examine the person with mental illness before the full commitment hearing takes place. This doctor is usually referred to as the court examiner.

Defense Attorney

The defense attorney represents the person with mental illness. The person with mental illness can either hire an attorney or wait for the court to appoint one. A court-appointed attorney is free, has a lot of experience in the area of civil commitment, and will do the same job as a hired lawyer. Each county differs in how it appoints defense attorneys, but each attorney knows about and practices in the area of civil commitment. Understand that the defense attorney must represent the wishes of his or her client even if it is not in that person's best interest.

Health Officer

A health officer is a licensed physician, psychologist, social worker or registered nurse working in an emergency room or a psychiatric or public health nurse.

Jarvis Hearing /Neuroleptic Hearing, ITP (intensive treatment petition)

In certain cases, the court can order the person with mental illness to receive neuroleptic medications that she does not want to take. This decision is made at a separate hearing, which is called a Jarvis Hearing. You will find different names for this process in different counties. This hearing usually occurs simultaneously with commitment hearings, but at times is separate. If a person does not refuse but is not able to consent to taking the medications, the court can appoint a substitute decision maker in lieu of an involuntary treatment order.

Peace Officer

A peace officer is a sheriff, police officer or state patrol officer.

Petitioner

The person who files the petition with the court is called the petitioner. Any interested person may file a petition for commitment. The petition tells the court

the reasons the person with mental illness should be committed. The family should do everything possible to make sure that the petitioner is a professional such as a doctor, because the person with mental illness is often angry at whom-ever initiates the process. Petitions are often filed by hospitals or treatment facilities, but family members and people in the community may file them, too.

Prepetition Screening Team (PST)

Your county should have a person or group of people that investigate requests to file a petition for commitment. These are the people you contact to start the Civil Commitment process. They write the prepetition screening report.

Price Hearing

A Price Hearing is similar to a Jarvis hearing but instead of requesting to administer medications, it is to authorize electroconvulsive therapy (ECT).

Respondent

The person who is being committed is called the respondent.

APPENDIX: COUNTY INFORMATION

Hennepin County

Hennepin County Attorney's Office Adult Services Section and the Probate-Mental Health Division of Hennepin County District Court handle Civil Commitment cases in Hennepin County. The Hennepin County Prepetition Screening Program can be reached at 612-348-2787 and the Adult Services Section of the Hennepin County Attorney can be reached at 612-348-6740 (fax is 612-348-6430).

Hennepin County asks the petitioner to review a copy of the prepetition screening report and to note any incorrect information. If something is wrong, the report cannot be corrected, but the corrected information can still be given to everyone involved. If an individual is acting as the petitioner, that individual will be asked to sign the petition.

Each respondent is assigned a case manager through the Hennepin County Children, Family and Adult Services Department. Case management services are available at the respondent's request after court jurisdiction ends, and can be arranged through Hennepin County Children, Family and Adult Services Department. If you have concerns at any time, tell the case manager. If the court orders treatment, either through a commitment or under a court-supervised voluntary arrangement, let the case manager know well before the court order expires (at least a month, if possible) if you feel the court supervision should be extended.

Ramsey County

The Civil Commitments Unit in Ramsey County investigates all requests for a petition for commitment. The number is 651-266-2804.

If the team recommends commitment, they draft a report summarizing their

investigation and submit this to the Civil Commitment Unit of the Ramsey County Attorney's Office. An Assistant County Attorney reviews the petition, the attachments, and the prepetition screening report to ensure that all of the requirements for a valid commitment are met and that there is sufficient evidence to prove the underlying behaviors and that commitment is the least restrictive alternative. If the team rejects the petition, the request is returned to the petitioner, who may appeal directly to the Ramsey county attorney's Office.

Anoka County

To begin a Civil Commitment proceeding, call Anoka County Mental Health Intake and Prepetition Screening at 763-422-7070.

When someone calls to initiate the commitment process, Anoka County prepetition screeners ask for facts supporting the claims. It is recommended that the family contact the treatment facility to provide information, when the person is already in a hospital. The prepetition screener will work with the family and the treatment facility's social worker to examine options for treatment and to identify sources of funding for treatment. If prepetition screening recommends that a petition be filed, a written report is prepared.

Petitions are drafted by the hospital where the patient is receiving care (administrative petition), or by the County Attorney's Office Protective Services Unit. The petitioner is a hospital administrator or social worker. The county attorney must approve all petitions before they can be filed with the court. A prepetition screening report is filed with all petitions. With limited exceptions, a recent examiner's statement supporting commitment is also required to be filed with the petition.

Petitions are filed in the Anoka County District Court, probate division. A representative from the prepetition screening unit or county case manager familiar with the patient's case will attend all court proceedings, and will coordinate treatment planning. Family members and acquaintances may be asked to provide information about the matter, and may occasionally be asked to testify.

If neuroleptic medication is recommended, and the patient does not have the capacity to make decisions about taking the medications, the court appoints a Substitute Decision Maker at the time the petition is filled with the authority to consent to medications being administered. If the SDM does not consent, or the patient refuses the medications, a Jarvis hearing is scheduled to occur at the same time as the commitment hearing.

Carver County

Contact Carver County Adult Services (part of Community Social Services) at 952-361-1600.

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Carver County

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Chisago County

Contact Chisago County Human Services Division at 651-213-0324.

Crow Wing County

Contact a county mental health intake worker directly at 218-824-1140.

Dakota County

Contact Dakota County Probate/Mental Health Court Social Services Department at 651-554-6000.

Goodhue County

Contact Welfare/Social Service office at 651-385-3232.

Isanti County

Contact the Family Services Department at 763-689-1711. If the PST does not recommend commitment, the Social Services Department informs the family or the hospital that they have the right to contact the county attorney's office to file for commitment on their own.

Nobles County

Contact the Social Services Unit of the Nobles County Family Services Agency at 507-295-5213.

Olmsted County

Family members should begin by calling Community Services at 507-328-6400. If you call the Olmsted County Attorney's Office prior to prepetition screening, you will be referred to Social Services.

Scott County

Contact Scott County Social Services Central Intake at 952-445-7751.

St. Louis County

St. Louis County Social Services Division can be reached at 218-726-2000 or 800-450-9777 (switchboard for all of St. Louis County).

Stearns County (St. Cloud)

Contact the Stearns County Service Entry Unit at 320-656-6225. This unit is part of the Adult Mental Health Unit (320-656-6080), of the Stearns County Human Services Department. The workers at the Service Entry Unit will speak with you regarding your concerns and set up a time to meet with you. A coverage person from the Service Entry Unit will meet with you and your family. During this interview, the coverage person will discuss two options for the person with mental illness: conducting a vulnerable adult report or involuntary commitment. If you wish to proceed with involuntary commitment and you wish to be the petitioner - the coverage person will initiate the prepetition screening process.

If you are dissatisfied with the results of the prepetition screening process, you may still appeal the findings of the prepetition screening investigative team to the county attorney.

Washington County

Contact Washington County Adult Mental Health Services at 651-430-6484.

Winona County

Contact Hiawatha Valley Mental Health Center at 1-800-657-6777 or 507-454-4341. Winona County contracts with this center to conduct all mental health services for Winona County, including conducting prepetition screening services.

The screening number is 507-454-7155. Winona County Human Services can be reached at 507-457-6200.

Wright County

Contact 763-682-7481 to initiate the process.

RESOURCES

NAMI Minnesota
800 Transfer Road, Suite 7A
St. Paul, MN 55114
651-645-2948 1-888-473-0237
www.namimn.org

Minnesota Disability Law Center

The Minnesota Disability Law Center works to promote, expand and protect the human and legal rights of persons with disabilities through direct legal representation, advocacy and education.

612-334-5970 1-800-292-4150
<http://www.mndlc.org/>

Office of the Ombudsman for Mental Health and Developmental Disabilities

The Ombudsman for Mental Health and Developmental Disabilities assists with the following: concerns or complaints about services, questions about rights, grievances, access to appropriate services, general questions or the need for information concerning services for persons with disabilities.

651-296-3848 1-800-657-3506
<http://www.ombudmhmr.state.mn.us/>

12/19/06



800 Transfer Road, Suite 31
Saint Paul, MN 55114

www.namihelps.org

phone: 651-645-2948
toll free: 1-888-NAMI-HELPS
fax: 651-645-7379
e-mail: nami-mn@nami.org