



State of Minnesota  
Office of the Ombudsman for Mental Health and Developmental Disabilities  
**Civil Commitment Training and Resource Center**



## *The Civil Commitment Process*

*Minn. Stat. §§ 253B.07 – 253B.09 and 253B.17*

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This fact sheet explains the civil commitment process. It is important to point out that the Minnesota Commitment and Treatment Act, 253B, makes it clear that voluntary admission is preferred over commitments. 253B.04 allows any person over the age of 16 years to request voluntary admission for treatment of chemical dependency, mental illness and developmental disabilities. Children under 16 years may be admitted voluntarily by a parent or legal guardian after an independent evaluation.

Effective Aug. 1, 2003, the law states a person who is voluntarily participating in treatment for mental illness is not subject to commitment if:

1. The person has given informed consent or someone with the legal authority to do so has consented, and,
2. Is participating in medically appropriate treatment including neuroleptic medications or ECT.
3. This does not apply if the court finds it unlikely that the person will remain in treatment or cooperate with treatment unless the person is committed.
4. Persons legally authorized to consent may be a health care directive proxy, a guardian or conservator or a substitute decision maker appointed by the court for this purpose.
5. This does not apply to person's under Rule 20 or to persons being committed as mentally ill and dangerous.

### **1. The Pre-petition Screening**

Any person may request that the county conduct an investigation into whether you should be committed. Before any petition is filed, a county pre-petition screening team must review it. The screening team will gather information about your condition and decide whether they think you meet the requirements for commitment.

This process must include:

1. personally interviewing you;
2. identifying and investigating the alleged behavior that justifies commitment;
3. identifying and exploring alternatives to commitment and explaining why they are being rejected;
4. gathering other information related to taking medications, your capacity to consent, whether you have an advance directive, and effectiveness of past treatment;
5. contacting any insurer for information on payment for cost of care and authorized providers;
6. Provide you with a notice that explains your rights, the commitment process and the legal effects of commitment.

The person who visits you from the screening team for the personal interview must identify him or herself and explain why s/he is talking to you. This person must also explain that anything you say may be used in the report and in court. This person should not be the same person trying to commit you. No member of the pre-petition screening team is allowed to file a petition for civil commitment. This team may also ask questions of your family, hospital staff, insurance company and others. The law allows the team to do this without your permission. It is always a good idea to write down the person's name and other information to help you remember it.

If you do not have an interview with the pre-petition screening team but a commitment petition is filed, inform your attorney. When the pre-petition screening team recommends commitment, a written report will be sent to the county attorney. If the pre-petition screening team does not recommend commitment, the petitioner may ask the county attorney to proceed with the petition anyway.

## **2. Filing a Petition**

Any person may file a petition for commitment. The petition may be filed in the district court in the county of financial responsibility or where you are currently present. You have a right to see the petition that is filed.

## **3. Your Preliminary Hearing** (Also called the “Probable Cause” hearing.)

After a commitment petition is filed, the court may order that you be placed on a “judicial hold.” (See: *Emergency Holds and Judicial Holds Fact Sheet*.) You may already be on an emergency hold at this time, but the court may extend your confinement with the judicial hold. Within 72 hours of being placed on the judicial hold, a preliminary hearing must be held to determine whether the judicial hold should continue. Weekends and legal holidays are not counted in the 72 hour period. You have the right to meet with your court-appointed attorney prior to this hearing. You may submit a request for your preliminary hearing to be held in the district court where you live if the county where you currently live is different from your county of financial responsibility.

The court may continue the judicial hold if the court believes you may cause serious physical harm to yourself or others if you are not confined. The court may also appoint a substitute decision-maker at the preliminary hearing to consent to neuroleptic medications.

Before the full commitment hearing, a doctor or PhD psychologist must give you an examination. The court will appoint the examiner. You also have a right to a second examination by a doctor of your choice. The county will pay for both examinations.

## **4. Your Commitment Hearing**

### ***Time and Place***

The commitment hearing is held in a courtroom setting and follows formal court procedures in order to protect your rights. The hearing may be held at a hospital if allowed by local rule. The commitment hearing must be held within 14 days from when the petition was filed, but the hearing may be extended an additional 30 days. You can demand an immediate hearing to be held within 5 business days, but the court may grant an extension of up to 10 additional days for good cause.

### ***Rights***

You have the right to attend the hearing, to testify and to present evidence during the hearing. You should talk to your attorney regarding the best way to put a good case together. (See: *What to Expect of Your Attorney Fact Sheet*.) You may choose not to attend the hearing. A court may exclude you if it feels you are seriously disruptive or incapable of comprehending or participating in the proceeding.

Your ability to participate in the hearing must not be hampered by medication. You have the right to not be on the medications during the hearing. If you are taking medications, the court must be given a list of medications taken in the last 48 hours.

### ***Findings***

The court may order commitment if it makes findings based on clear and convincing evidence that:

1. You are mentally ill, chemically dependent or developmentally disabled;
2. There is a substantial likelihood you will physically harm yourself or others as demonstrated by:
  - a) a failure to obtain food, clothing, shelter or medical care as a result of the impairment,
  - b) a recent attempt or threat to physically harm self or others,
  - c) inability to provide food, clothing, shelter or medical care or,
  - d) volitional conduct involving significant damage to substantial property.
3. There is no less restrictive treatment program that will meet your treatment needs.

The length of the initial commitment cannot exceed six months. At six months, another court order is necessary for further commitment. This does not mean that you must stay in the hospital for the entire six months. If the hospital staff feels you are ready for discharge, they may do so before the commitment period ends.

The commitment may be appealed to the court of appeals. Talk to your attorney if you want to appeal your commitment.

## **5. Alternative Outcomes for Your Commitment**

### ***Release before Commitment***

Two less-restrictive alternatives to commitment are a “continuance for dismissal” and a “stayed commitment order.” The court may continue a case for dismissal for up to 90 days after which the petition is dismissed. A court may also stay a commitment order for up to 6 months, which continues so long as the patient complies with the conditions of the stay. A stayed commitment may be renewed for an additional 12 months if necessary.

If the commitment order is stayed for more than 14 days, the court must issue an order that includes:

1. a written plan for services with which you agree;
2. a finding that the treatment is available;
3. there is money to pay for it, and
4. the conditions you must meet to avoid revocation of the stay.

A case manager will be assigned to you to report your progress to the court. If you “substantially” fail to comply with the conditions, the case manager must report this failure to the court. If the case manager or court wants to revoke your release, a hearing must be held on the proposed revocation.

### ***Community-based Treatment***

It is possible for you to be committed to a community-based program, whether a live-in program or not. If the court finds that community-based commitment is appropriate, a written plan of services must be developed with conditions you must comply with and consequences for non-compliance. The consequences for non-compliance may include commitment to a more restrictive setting. In order to commit you to community-based

treatment, the court must find that the treatment you need is available and that it can be paid for. This may involve the question of whether you can pay for the treatment. Some insurance plans may pay for this type of treatment. If your insurance covers this type of treatment, it must pay the cost of care per your policy. Medical Assistance or the county may also have an obligation to pay for this treatment.

## **6. Continuing your Commitment**

If the hospital does not feel you are ready to be discharged at the end of six months, the court will schedule another hearing to extend the commitment. You have the same rights as in the first proceeding, including the right to a second examiner. If the court determines you need continued treatment, you will be committed for no longer than 12 months. Again, if the hospital staff feels you are ready, they may release you at any time.

## **7. Reviewing Your Commitment**

If you believe treatment is no longer necessary or you are no longer mentally ill, you have the right to request that the court discharge you from your commitment. You can ask the court to review your case at anytime. Contact your attorney to help you file the petition to review your case.

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