

Ohio's Involuntary Civil Commitment Process

Judicial Hospitalization

A Comparison of the Affidavit and Emergency Hospitalization Methods

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50 West Broad Street, Suite 1400 Columbus, Ohio 43215-5923
614-466-7264 / 800-282-9181 in Ohio TTY 614-728-2553 800-858-3542
<http://olrs.ohio.gov>

Introduction

Ohio's involuntary civil commitment process, or judicial hospitalization, allows the state to hospitalize individuals with a mental illness against their will provided certain criteria are met.

Central to the process of judicial hospitalization is a showing that an individual is a "mentally ill person subject to hospitalization by court order," as defined by Ohio Revised Code (ORC) 5122.01(B). The term "mentally ill person subject to hospitalization by court order" means a person who because of their mental illness:

- represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
- represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
- represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be made immediately available in the community; or
- would benefit from treatment in a hospital for the person's mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person.

There are two methods under the law for initiating the judicial hospitalization process: (1) filing of an affidavit, or (2) emergency hospitalization. As discussed below, filing of an affidavit is the preferred method, as emergency hospitalization is a drastic measure that should be invoked sparingly.

Regardless of which method is utilized, the court cannot issue an order to commit the individual unless the court first finds that the highest civil evidentiary standard — clear and convincing evidence — has been met to show that the individual is a person with a mental illness subject to hospitalization by court order.

If the court finds that the clear and convincing evidence standard has not been met, it must discharge the individual immediately. The court must hold a formal hearing to determine whether the individual is a person with mental illness subject to hospitalization by court order within five (5) court days after the filing of the affidavit or the detention of the individual by emergency hospitalization or by a temporary order of detention (TOD), whichever occurs first (ORC 5122.141). However, the law prefers that the hearing be held prior to detention of the individual, where possible.

Affidavit Process (ORC 5122.11)

Ordinarily, the civil commitment process must be initiated by the filing of an affidavit with the probate court having jurisdiction. The filing of the affidavit triggers multiple procedures designed to protect the individual's due process and liberty interests, including investigation and notice requirements. The affidavit:

- can be filed by any person or persons having reliable information or actual knowledge that the individual is a person with a mental illness and subject to hospitalization by court order;
- must be filed with the court in the proper manner and form prescribed by the Ohio Department of Mental Health;
- must allege the specific category or categories in ORC 5122.01(B) that apply; and
- must provide a statement of the alleged facts sufficient to show probable cause that the individual is a person with mental illness subject to hospitalization by court order.

The affiant may also include, or may be required by the court to include, certificates signed by a psychiatrist, or both a licensed clinical psychologist and a licensed physician. The certificate must state that the professional examined the individual and is of the opinion that the individual is a person with mental illness subject to hospitalization by court order. If the individual refused to be examined by a psychiatrist or by a licensed clinical psychologist and physician, the affiant must submit with the affidavit a written statement, under oath, indicating the individual's refusal.

Depending upon the county, the affiant may first be referred to a pre-screener at a community mental health center as part of the investigation process. As a result, the individual is often diverted to less restrictive treatment or protective services without the filing of a formal affidavit. This spares the individual from the involuntary civil commitment process and the inherent stigma and stress that comes with it.

Upon the filing of a proper affidavit and any accompanying certificates, a judge or a court magistrate who is an attorney must first determine whether there is probable cause to believe that the individual is a "mentally ill person subject to hospitalization by court order." If the judge or magistrate determines that probable cause exists, he or she may issue a TOD and set the matter for further hearing to determine whether the individual is a person with mental illness subject to hospitalization by court order.

The TOD is available to the court should the court find it necessary to hold the individual for observation and treatment until the formal hearing.

An individual subject to a TOD cannot be held for more than forty-eight (48) hours and the individual may not be detained in a nonmedical facility used to detain persons charged with or convicted of criminal offenses unless the court determines that a less restrictive setting cannot be made available. The court may order a health officer, police officer, or sheriff to take the individual into custody and transport the individual to the selected location pursuant to the TOD.

Whether an individual is a person with a mental illness subject to hospitalization by court order is a highly sensitive determination. The affidavit procedure demonstrates that the law emphasizes prior judicial review with full due process protections before an individual is detained. Nevertheless, there is an exception for emergency situations.

Emergency Hospitalization (ORC 5122.10)

As its name suggests, emergency hospitalization is a narrow exception to the requirement that the individual receive at least some judicial review prior to involuntary commitment or detention and, therefore, should only be invoked in an emergency. Pursuant to the emergency hospitalization statute, any psychiatrist, licensed clinical psychologist, licensed physician, health officer, parole officer, police officer, or sheriff (hereinafter collectively "professional") may take an individual into custody and transport the individual to a hospital or a general hospital unlicensed by the Department of Mental Health, provided the following criteria are met:

- the professional must have reason to believe that the individual is a person with mental illness subject to hospitalization by court order, as defined by ORC 5122.01(B), and
- the professional must have reason to believe that the individual represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination.

The professional must provide a written statement to the hospital stating the circumstances and reasons for taking the individual into custody. The individual and the individual's counsel has a right to the statement upon request. The professional is required to take the individual into custody in the least conspicuous manner possible and must explain that it is not a criminal arrest, that the purpose is for examination, and must provide the professional's identity and the identity of the hospital where the individual is being transported.

The hospital must examine the individual within twenty-four (24) hours of the individual's arrival. If the individual was taken to a general hospital, the individual must be transferred within 24 hours to a hospital licensed or supervised by the Department of Mental Health. If the individual must remain overnight in order to conduct the examination, the individual must be admitted in an "unclassified" status.

If the chief clinical officer believes the individual is not a person with a mental illness subject to hospitalization by court order, the individual must be discharged immediately unless a court has issued a TOD.

If the chief clinical officer believes that the individual is a person with mental illness subject to hospitalization by court order, the individual may be detained for up to three (3) court days. During this period, the chief clinical officer may admit the individual as a voluntary patient or may file an affidavit pursuant to the process described above. If neither action is taken and the court has not issued a TOD, the individual must be discharged at the expiration of the 3-day period unless the individual has been sentenced to the Department of Rehabilitation and Correction (DRC), in which case the individual shall be discharged to the DRC. Thus, the individual could potentially be hospitalized for several days prior to a court hearing.

Conclusion

An individual has liberty interests and due process rights that mandate formal commitment proceedings before a court of law. Consequently, the law strongly favors judicial review prior to custody and detention of an individual. The affidavit process is the primary legal mechanism for instituting commitment proceedings and triggers the application of various due process protections. Issuance of a TOD allows the probate court to hold the individual for treatment and observation should the court deem it necessary. Depending on the probate court, the affidavit process may also provide an opportunity for the individual to get treatment in an alternative setting and avoid involuntary commitment altogether.

Conversely, emergency hospitalization is an extreme measure that allows for detention of individuals against their will without prior judicial review or investigation. Accordingly, emergency hospitalization is intended to be the exception, rather than the rule, for initiating judicial hospitalization. Expanding the number of individuals who can detain an individual pursuant to emergency hospitalization unnecessarily jeopardizes this preference and increases the likelihood of error affecting the rights of a group of individuals already subjected to much stigma and stereotyping.