

INVOLUNTARY CIVIL COMMITMENT FOR HOSPITALIZATION (EMERGENCY AND JUDICIAL)

There are two times when a person may be hospitalized against his/her wishes. Such hospitalization is known as *involuntary civil commitment*. (A person may also request to be hospitalized for mental health issues and this process is known as voluntary admission. See O.R.C. 5122.02.)

O.R.C. 5122.10 governs *emergency involuntary hospitalization* and O.R.C. 5122.11 governs *judicial involuntary hospitalization*.

Doctors, health officers, probation officers, police officers or sheriffs may take a person into custody if they have reason to believe that the person is mentally ill and subject to hospitalization. They must also have reason to believe that the person represents a substantial risk of harm to self or others if allowed to remain at liberty pending a psychiatric examination. The person may be transported to a hospital/general hospital. The hospital has a very short time to determine whether the person needs involuntary hospitalization. This is known as involuntary emergency commitment. See O.R.C. 5122.10.

Anyone, including court personnel, a prosecutor, police officer, family or friends may pursue a judicial involuntary commitment. The person seeking to cause involuntary hospitalization of another believed to be mentally ill is called the "affiant." The person believed to be ill is called the "respondent." This process begins by the affiant filing an affidavit with the probate court in the county where the ill person resides. The affiant must allege facts sufficient to provide the probate court probable cause to believe the respondent is mentally ill, needs hospitalization and refuses examination or treatment. The probate court judge or magistrate may then issue a "warrant" of detention. The warrant or "WOD" directs police to pick up and transport the respondent to a hospital. See O.R.C. 5122.11.

As court personnel, law enforcement or family members may need to request involuntary hospitalization of another, some general information is provided. Ohio law also contains procedures probate court must follow when a person who initially and voluntarily requested hospitalization wants to be released from treatment but the hospital does not believe the person is ready. That procedure, voluntary hospitalization, is not covered herein.

Probate court paperwork is confidential except to the defendant (respondent.)

For purposes of both emergency and judicial involuntary civil commitment, you will need to know some legal definitions. They are set forth below.

DEFINITIONS USED FOR INVOLUNTARY CIVIL HOSPITALIZATIONS: The person being probated is called the RESPONDENT and the person filing the affidavit is called the AFFIANT.

MENTALLY ILL PERSON SUBJECT TO HOSPITALIZATION: Means a person suffering from mental illness who, because of the illness:

- (1) Represents a substantial risk of physical harm to self as manifested by evidence of, or attempts at, suicide or serious self-inflicted bodily harm; OR
- (2) 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; OR

(3) 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 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

(4). 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. (O.R.C. 5122.01(B)

MENTAL ILLNESS: Means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life. O.R.C. 5122.01(A).

COMMUNITY MENTAL HEALTH AGENCY: Means an agency, program or facility with which a board of mental health and board of alcohol/drug addiction contracts.

PROSECUTOR: Means a prosecuting attorney or a city director of law, village solicitor, or similar chief legal officer of a municipal corporation who has authority to prosecute a criminal case that is before the court or the criminal case in which a defendant in a criminal case has been found incompetent to stand trial or not guilty by reason of insanity. O.R.C. 2945.37(A)(1).

INVOLUNTARY CIVIL COMMITMENT EMERGENCY HOSPITALIZATION ("PINK SLIP")

I. WHAT'S GOING ON WITH DEFENDANT/PERSON?

Defendant is charged with a crime and is in jail but has not yet made bond. The police think he is exhibiting characteristics that may indicate he is a mentally ill person in need of immediate treatment because the defendant's behavior presents a threat of physical harm to himself or others.

A person at the grocery store is exhibiting characteristics that may indicate he/she is a mentally ill person in need of immediate treatment. Police respond to the situation. The person is not breaking any laws but police are concerned that the person is unable to care for him/herself or is exhibiting behaviors which present a substantial risk of harm to the person or others.

Defendant who is on probation appears for a post-conviction probation appointment at the court house and exhibits characteristics that may indicate he/she is a mentally ill person.

The defendant must be a Williams County resident or a non-resident currently residing in Williams County.

II. QUESTIONS PRESENTED:

What are the police or court personnel to do with this person who can't just be released back into the public or left where he/she was found?

Is this defendant/person a "mentally ill person subject to hospitalization?"

In order to be eligible for involuntary hospitalization, the defendant must BOTH:

1) have a mental illness, and

2) be a current danger to self or others, be gravely disabled and at risk or be in need of hospitalization due to a said risk.

III. RELEVANT STATUTES: O.R.C. 5122.10:

A health officer may take a person into custody or

A police officer may take a person into custody or

A probation officer with the approval of the judge may take a defendant on probation/ under community control into custody IF that officer has reason to believe:

1. The person is “mentally ill” and subject to hospitalization by a court (see Definitions, supra) AND

2. The person represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending the hospital’s examination.

A mentally ill person would be subject to hospitalization because the officer believes the person represents:

1. A substantial risk of physical harm to him/herself as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm or

2. A substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior or evidence of recent threats that place another in reasonable fear of violent behavior or physical harm or

3. A substantial and immediate risk of serious physical impairment or injury to himself as manifested by evidence that he is unable to provide for and is not providing for his basic physical needs because of mental illness and that appropriate provision for such needs cannot be made immediately available in the community or

4. A person who would benefit from treatment in a hospital for his 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 himself (R.C. 5122.01(B)).

IV. PROCEDURE WHEN A PERSON, NOT UNDER ARREST, NEEDS EMERGENCY HOSPITALIZATION

A police officer, or a probation officer with judge’s approval may take a person the officer believes is mentally ill and subject to hospitalization into custody. The criteria on which the officer must base his/her belief is set forth immediately above (R.C. 5122.01(B)).

In preparation for taking the person into custody, the officer must complete an Application for Emergency Admission, commonly known as a “pink slip.” On the bottom of the pink slip is an area called, “Statement of Belief.” Here, a written statement shall be made by the police or probation officer stating the circumstances under which the person was taken into custody and why. For a probation officer, this may include observations that the probationer appears incapable of complying with the court’s or doctor’s orders. The statement should be objective, informational, and address the reasons the person appears mentally ill, in need of hospitalization and a danger to self or others if not admitted

to the hospital. This information provides probable cause to have the person admitted. (The hospitalized person will be entitled to read this statement.) The officer shall then sign the pink slip on the back with name, date and title. It is suggested that a probation officer's form also contain the signature, title and date of the judge who has approved the person being taken into custody. The "pink slip" containing the written statement is left with the hospital.

When taking the person into custody, the officer shall tell the person their:

1. Name and
2. Professional designation/title and
3. Agency with which they are affiliated and
4. That the person is not under arrest and
5. That the person is being taken for examination by a mental health professional at a facility and
6. The name of the facility to which the person is being taken.

The officer may immediately transport that person to a "hospital" (see, Definitions, supra). It is suggested that a probation officer ask the judge to write an order on the case which directs the local police to transport the defendant to the hospital. In Cuyahoga County, a request may also be made for CIT assistance with the transport. The probationer should be turned over to the police or CIT along with the original "pink slip" and any incident/medical reports the court believes might be helpful to the hospital. The probation officer should retain copies in the court's records.

Since there are no criminal charges or probation violation charges associated with the officer's actions, the person will not be returned to the officer's control.

V. EVIDENCE NEEDED BY OFFICER TO SHOW PROBABLE CAUSE THAT PERSON IS MENTALLY ILL AND SUBJECT TO HOSPITALIZATION

The officer may state facts and observations he/she saw. However, the officer may also rely and list as probable cause factors the determination of a psychiatrist, licensed clinical psychologist, licensed physician, health officer or parole officer as to the existence of mental illness and risk of harm (OAG 88-070).

The officer may also rely upon the statements of another person who has observed the actions of the person to be admitted i.e. hearsay (OAG-79-021).

VI. WHAT HAPPENS TO THE PERSON AFTER THE OFFICER LEAVES?

If the person has not been charged with a crime, the transporting officer may leave and return to regular duties once the hospital is seeing the person.

If, after no more than 3 days, the hospital determines that the person needs no further treatment, the chief clinical officer shall discharge the person. If treatment is needed, the hospital will transfer the person to an appropriate care situation.

VII. THE COURT'S AND OFFICER'S LIABILITY:

According to O.R.C. 5122.34, persons and agencies acting in good faith, either upon actual knowledge or information thought by them to be reliable, who procedurally or physically assist in the hospitalization or discharge, determination of appropriate placement, or in judicial proceedings of a person, do not come within any criminal provisions, and are free from any liability to the person hospitalized or to any other person.

INVOLUNTARY CIVIL COMMITMENT JUDICIAL COMMITMENT

I. WHAT'S GOING ON WITH THE DEFENDANT/PERSON?

A defendant/person currently residing in Williams County is behaving in a bizarre manner causing family, friends, court personnel, a prosecutor, judge or anyone else to believe the resident is a "mentally ill person subject to hospitalization by court order." (See Definitions, above.) Anyone with knowledge of the person's behavior may institute these proceedings.

The person is in need of help. From what you understand of the term, it would appear the person should be "probated."

II. QUESTIONS PRESENTED:

How can the person get the mental health treatment or help he/she appears to need?

Can you help this person without long term obligation or liability to be appropriately connected and treated with the mental health services the person needs?

III. RELEVANT STATUTES AND PROCEDURES:

[Reminder: The person who needs mental health care is called the "respondent" and the person trying to get them help is called the "affiant."]

The affiant goes to the probate court in the county where the respondent resides. In Williams County, the affiant goes to the Williams County Probate Court, One Courthouse Square, Second Floor, Bryan, Ohio. The affiant will need to have had recent contact with the respondent.

O.R.C. 5122.11: An affidavit is prepared which the affiant will sign. It must contain a statement of alleged facts sufficient to indicate probable cause to believe that the respondent is a mentally ill person subject to hospitalization by court order.

O.R.C. 5122.01(B): See Definition of "mentally ill person subject to hospitalization," above.

IV. WHAT NEEDS TO BE ALLEGED AND, EVENTUALLY, PROVED?

Allegations for the affidavit may be made by any person. That person should state facts based upon actual or reliable information. The affidavit should include:

- Facts about the person's behavior (refer to definition of "mentally ill person subject to hospitalization, above, and cover those topics.

- An accurate address for where the respondent is located – this is where the police will go to execute the warrant of detention to take the respondent into custody for the Probate Court.

The affidavit must be accompanied by a separate sworn statement that the person has refused to be examined by a psychiatrist or licensed clinical psychologist or licensed physician; that the respondent has refused treatment voluntarily. If the person is currently receiving treatment, the court will ask for a recommendation about hospitalization from the treating doctor.

This affidavit, the separate sworn statement and the information contained therein is confidential and NOT public record although the respondent is entitled to see it.

V. WILLIAMS COUNTY PROCEDURE:

See the link for Civil Commitment Instructions.

VI. FACTS ABOUT THE WARRANT OF DETENTION:

- The WOD is an order for an evaluation in a hospital setting. - It does not expire and is good until the respondent is picked up by police. - It is issued to Community Hospital and Wellness Center Emergency Room or such bed as the respondent's family or doctor has arranged.
- The order holds the respondent in the hospital until the doctor determines respondent needs to be hospitalized.
- It does not automatically permit forced medication.
- It expires when the respondent voluntarily signs to admit him/herself or is discharged from the hospital.
- The WOD is good only one time, for only one evaluation. Should the respondent become ill in the future, a new warrant would be needed.

The probate court will not issue a warrant of detention:

- To determine if a person is incompetent. Probating a person is about determining if he/she is mentally ill and in need of hospitalization
- For substance abuse treatment only.
- If the affiant cannot provide an address for the respondent. - As a means of eviction.
- As a means to prevent the respondent from returning home upon release from hospitalization. - To stop a hospital from discharging the respondent.
- To make the hospital stay longer. The warrant is for an evaluation.
- As a preventative measure before some behavior occurs.
- For the affiant to sit on or save for the future, if ever needed. - As a solution to domestic disputes or child custody battles.
- If the respondent is in jail. If respondent is in jail, probate court considers that the confining police department to have "first jurisdiction" to do something about the defendant. The WOD will not authorize defendant's release from another court's warrant. In such circumstances, the reasons for

defendant's incarceration and possible reduction in bond or cancellation of local warrant would be a matter for the local court and the judge who has control over such matters.....not probate court.

VII. THE COURT'S AND OFFICER'S LIABILITY:

According to O.R.C. 5122.34, persons and agencies acting in good faith, either upon actual knowledge or information thought by them to be reliable, who procedurally or physically assist in the hospitalization or discharge, determination of appropriate placement, or in judicial proceedings of a person, do not come within any criminal provisions, and are free from any liability to the person hospitalized or to any other person.