

Call for Justice, LLC—United Way 2-1-1 Training Paper

Session 20: Understanding Civil Judicial Commitments in Minnesota

July 17 and 18, 2014: Andrea Martin and Pat Olson, Assistant Hennepin County Attorneys, Adult Services Section

Featured Speakers' Topic

This month, we hear from Andrea Martin and Pat Olson, Assistant Hennepin County Attorneys who work in the Adult Services Section of the County Attorney's office. They will present on civil judicial commitments—what are they; frequently asked questions; and resources associated with commitments.

What is a Civil Judicial Commitment?

A civil judicial commitment is a procedural process by which an individual experiencing a mental health or chemical dependency crisis and deemed a potential harm to him/herself or to others is involuntarily admitted to a hospital or other medical institution for a set period of time. Because a civil commitment is involuntary (e.g. the person being committed seeks to avoid or refuse treatment) and temporarily results in the loss of liberty, certain legal procedures must be satisfied before a judge will order that the person be “committed.” (That’s more of that due process stuff we considered in our training on criminal law, another area where personal liberty can be taken away.)

The purposes of a civil commitment are to (1) treat a person who suffers from a mental illness or chemical dependency problem when they’re unable or unwilling to obtain treatment themselves and (2) protect a person with mental illness or a chemical dependency problem from harming him/herself or others. In order for a commitment to occur, a judge must be convinced that there’s no less restrictive way to treat the person in need.

An individual’s actual time spent involuntarily committed can vary greatly. An “emergency hold” (which technically isn’t a “commitment” but nonetheless results in a person’s loss of personal liberty) lasts 72 business day hours (that is, the time period for calculating the hold doesn’t include weekends and holidays). For persons who go through the entire commitment process (described below), the period of hospital confinement (e.g. loss of personal liberty) may last six months. In some instances, the hospital confinement can go beyond six months.

RED FLAG: The civil commitment process can be both confusing and time sensitive. For those viewing this training paper on the Call for Justice, LLC website, please understand that this paper is not intended to be all-inclusive or detailed. This paper is merely a very general overview. Persons interested in pursuing commitment for a family member or friend should contact their local mental health organization to obtain up to date and complete information.

Civil Commitment Basics

While no two civil commitments in Minnesota are the same, for the most part there are many similarities in every commitment that occurs. These similarities include:

1. There must be a “mental health crisis” or “chemical dependency crisis” involving someone who either refuses or is incapable of obtaining treatment. Triggers for such crises can be someone discontinuing their mental health medications; a person’s failure to care for themselves physically; or a drug or alcohol dependency problem so severe that it threatens the person’s health or the health of another (such as in the case of a pregnant woman who’s consuming drugs or alcohol). Regardless of the reason for the mental health or chemical dependency crisis, the person at issue must either be unable/unwilling to obtain mental health (and/or physical health) treatment or chemical dependency treatment for themselves and/or be at risk of harming themselves or others.
2. Every civil commitment in Minnesota involves multiple assessments or evaluations by mental health/chemical dependency professionals. These assessments/evaluations occur at different stages of the commitment process (see below) and are conducted by different professionals; in this way, the system involves various checks and balances since no one professional can dictate that a person be committed. Instead, for a commitment to occur, there must not only be a consensus by mental health/chemical dependency professionals, but also a judge’s decision that the assessments/evaluations justify a commitment.
3. In Minnesota, every person at risk of being civilly committed is entitled to an attorney at no charge. Minnesota law provides that a person at risk of commitment (technically referred to as a “proposed patient”) has the right to be represented by counsel at each stage of the commitment proceedings. If a proposed patient cannot retain counsel, the court will appoint a qualified attorney to represent him/her at no cost. In fact, any proposed patient is entitled to court appointed counsel regardless of the patient’s income. Each judicial district maintains a roster of attorneys experienced in civil commitments from which court appointments are made.
4. There is no cross-state jurisdiction for civil commitments. In other words, a Minnesota court cannot compel a patient residing in another state to receive treatment in that state or in Minnesota. The court only has the power to order commitments in Minnesota for persons living or physically present in Minnesota.

The Commitment Process May Involve Various Kinds of “Holds”

It's important to understand that a person thought to be suffering from a mental health or chemical dependency crisis can be confined to a treatment facility for several days without a judge actually ordering the confinement. A temporary confinement for mental health or chemical dependency reasons is called a "hold." For example, if a mental health/chemical dependency treatment professional deems a person at risk, the professional can arrange for a "transport hold" where law enforcement or others physically transport the patient to a hospital for an evaluation by a medical or chemical dependency treatment professional. This type of hold may last several hours until an initial evaluation is conducted.

There is also a "medical hold" which may either arise from a transport hold or arise completely independently. With a medical hold, a person is confined to a treatment facility for up to 72 business day hours (e.g. weekends and holidays do not count toward the 72 hour limit). Again, the person in need will be evaluated/assessed during a medical hold.

Finally, a proposed patient may also be subject to a "judicial hold" which amounts to a hospital/treatment facility confinement for an additional 72 business day hours over and above a medical hold. At some point during a judicial hold, a court will conduct a preliminary hearing to determine if there is good cause to continue confining the patient. If so, the judicial hold may be extended beyond 72 business day hours.

A Representative Timeline/Procedural Steps

Let's assume that a parent living in Hennepin County is concerned about the erratic behavior of her twenty-eight year old son named Joe who lives at home. Here's a representative timeline/procedural steps associated with obtaining a civil commitment in Hennepin County, Minnesota. **(Note: don't assume that every commitment will follow this process; consult with mental health and legal professionals in your jurisdiction—including other Minnesota counties—for accurate procedural information.) :**

1. The parent contacts COPE (Community Outreach for Psychiatric Emergencies)(612-596-1223), which operates mobile crisis teams 24/7 in Hennepin County. COPE dispatches a team to the mother/Joe's house, which then assesses Joe. Assume for purposes of this example that the COPE team determines Joe is a risk to himself and other family members. At that point, COPE team members have authority to order a transport hold and they then arrange for an ambulance or police officers to transport Joe to a local hospital.
2. Once Joe is at the hospital, medical professionals conduct an initial evaluation, something that will occur within several hours of Joe arriving at the hospital. If the evaluation suggests the need for treatment and Joe is unwilling to voluntarily submit to such treatment, hospital staff can then impose a medical hold for up to 72 business day hours.

3. During the medical hold, medical professionals will determine if Joe needs to be compelled to obtain treatment. If so, representatives of Hennepin County Health and Human Services will go to the hospital and conduct a “pre-petition screening” which is an additional evaluation of Joe. This screening includes obtaining statements from doctors who have seen Joe during the medical hold. Additionally, HHHS will obtain copies of Joe’s medical/mental health records from various prior providers. In Joe’s case, HHHS determines a commitment is needed; they then submit a report to the Hennepin County Attorney’s office recommending that Joe be civilly committed for mental health treatment.
4. Assuming the County Attorney’s office agrees with the HHHS recommendation for Joe’s commitment, the County Attorney then files a petition for civil commitment. At that point, the County Attorney’s office asks for a judicial hold (another 72 business day hours).
5. Assuming that Joe doesn’t have access to his own attorney (rarely do patients have such access), a mental health court judge then appoints an attorney for Joe. As stated above, the attorney will come from a special roster of mental health attorneys. There is no charge to Joe for this attorney’s representation.
6. Filing the petition for civil commitment will trigger the judge to appoint an independent psychologist or psychiatrist to meet with Joe, review his medical records, and write a report to the judge offering an opinion about commitment. If the report recommends commitment and Joe doesn’t agree, Joe (or more accurately, Joe’s attorney) has the right to ask that the judge order a second examination by a psychologist or psychiatrist of their choosing. If these “experts” disagree about whether Joe should be committed, the judge will have to decide which expert to give most weight to.
7. At some point during the 72 hour judicial hold, the judge conducts a preliminary hearing to determine if medical/therapeutic evidence warrants keeping Joe in the hospital. Joe’s attorney and a Hennepin County Assistant Attorney will appear at that hearing. Assuming the judge finds there is a likelihood of Joe suffering serious physical harm or of others suffering such harm if Joe is not confined, the judge will then order that Joe be confined until a commitment hearing takes place (which usually occurs within 14 days of when the petition for confinement was filed; in some instances the commitment hearing can take place 45 days after the judicial hold was first imposed).
8. The civil commitment hearing for Joe is an actual trial with the judge presiding and attorneys examining witnesses (witnesses may include medical/treatment professionals and possibly family members or friends) and introducing evidence, such as medical records or reports. The Hennepin County Attorney represents the state in advocating for commitment; Joe’s attorney, in turn, advocates for Joe and attempts to show that civil commitment isn’t necessary/that the professionals who have evaluated/assessed Joe

are mistaken about the seriousness of Joe's condition/or that treatment options less severe than involuntary commitment exist.

9. After hearing witness testimony and reviewing written evidence, the judge makes a decision relative to Joe's commitment. The test or "standard of proof" is whether the County Attorney has shown by "clear and convincing evidence" that (1) Joe is mentally ill or chemically dependent with a danger component to either himself or to others; and (2) that there is "no suitable alternative to judicial commitment." In making this determination, the judge must consider the range of less restrictive treatment options for Joe, such as voluntary outpatient or inpatient care. Assume for purposes of this example that Joe refuses to submit to voluntary treatment; that leaves the judge with no alternative other than to consider if Joe should be released or committed.
10. In this case, the judge decides that Joe should be judicially committed. The practice is for the judge to commit a person "...to the Commissioner of Human Services" (which owns hundreds of various homes and facilities throughout the state); additionally, the majority of the time, the commitment order will commit the patient to the local hospital in which they are being held, e.g. "...to Abbott Northwestern Hospital and the Commissioner of Human Services". That allows the local hospital to transfer Joe to a state-owned facility if that turns out to be best, or to provisionally discharge Joe to any private program that meets Joe's treatment needs. Thus, in "committing" Joe, the judge takes from Joe the ability to make decisions relative to his care/wellbeing and shifts that decision-making authority to the state and medical community. The judge is not choosing the form of Joe's treatment or the location or how it will be paid for—that's left up to medical/chemical dependency professionals.
11. In practice, the judge will also make a finding that "there is no evidence before the court regarding costs" and leave it at that, so that the providers and insurance companies can sort out what funding is available; various forms of public funding can be applied for if necessary.
12. There are many variables to how long Joe will be confined for treatment; he also may actually be released prior to the expiration of six months, and yet still be subject to the Court's order for commitment. These variables are too numerous to list in this very general overview/training paper. Suffice to say that in many instances, persons civilly committed do not actually spend the entire length of the commitment physically confined in a hospital or treatment facility. However, if the person subject to a commitment order is released from hospital/treatment facility confinement only to later relapse/suddenly refuse to resubmit to voluntary treatment, all before the commitment order expires, that person can then be re-confined for involuntary treatment. The person governed by a commitment order retains his/her attorney the entire time they are subject to the order; hence, if Joe was released from the hospital early and there

was an effort to re-confine Joe for treatment, Joe would still be able to confer with/utilize the lawyer who appeared on his behalf at the commitment hearing.

RED FLAG: As stated above, one important take away is that the commitment process in Minnesota is designed with various checks and balances (e.g. the need for multiple assessments/evaluations by different treatment professionals; the appointment of an attorney for the proposed patient; the appointment of an independent psychological or psychiatric expert; and the provision that a judge [and not a mental health or chemical dependency treatment professional] will make the commitment decision). As a consequence, there is no reason to fear that a person might be “railroaded” into a commitment that’s not warranted.

Compelling the Use of Neuroleptic Medications

Given the brief overview nature of this training paper, we merely mention that Minnesota law provides that a person can be compelled to take/ingest certain neuroleptic medications (neuroleptics are antipsychotic medications used to treat schizophrenia and schizophrenia-related disorders). Minnesota law provides for “emergency” situations where neuroleptics can be administered without a judge’s order; those situations are temporary only. Ultimately, a judge will decide if a person can be forced to take neuroleptics for a sustained time period.

Who’s Responsible for the Cost of Treatment?

Section 253B.09 Subd. 3 of the Minnesota Statutes states “(t)he court shall determine the nature and extent of the property of the patient and of the persons who are liable for the patient’s care.” In other words, if a person being committed has financial resources or insurance to pay for his/her treatment, then those resources must be used. (This includes health insurance.) In some instances, another person may be responsible for the cost of treatment. If there are no assets or insurance to pay for treatment, then the committed person becomes financially responsible for any costs. (Whether a hospital or treatment facility can actually collect those costs is an entirely different question.)

Tips for Those Seeking Help for a Loved One in Crisis

We understand that people seeking help for a loved one or friend who suffers from mental health or chemical dependency problems are often overwhelmed by uncertainty and a lack of good information. **A good starting point is to call United Way 2-1-1**, where information and referral specialists can provide referrals to mental health/chemical dependency agencies. Our other tips include:

1. SAFELY get the loved one to a licensed professional for help. If there is an urgent, crisis-related need, choose between calling 911, driving the person to an ER, or calling COPE. **(Never put your personal safety or the personal safety of others at risk; in all cases of doubt, call 911.)** If the situation is difficult but still safe (and yet still evolving), take the person in need to the appropriate program like a chemical dependency Rule 25 assessment, or assessment at an eating disorder program, or helping them call Senior Linkage Line on a speakerphone, or helping them apply for coverage through www.mnsure.org, or even calling their existing health insurance carrier to schedule appointments or request case management help. If you want to get help for the person in need but still remain anonymous and at a distance (e.g. the neighbor that you are concerned for and a little frightened of), both Adult Protection (612-348-8526 in Hennepin County) and Child Protection (612-348-3552 in Hennepin County) take anonymous reports. (See below for Ramsey County resources.)
2. Get ACCURATE INFORMATION TO A LICENSED PROFESSIONAL—so they can assess what help the person needs, and how best to provide it—voluntarily, under a hold, or if a commitment petition must be filed. The person in crisis will often provide very little information, or worse yet, wildly inaccurate information. It's important to tell emergency responders as much information as possible and to follow the person in need to the hospital and repeat the information to the treating physicians; alternately, you may need to give detailed explanations to COPE, Adult Protection, Child Protection, Rule 25 assessors, and treating social workers, psychologists, and physicians. If the problem has been building up over time, keep a notebook or diary with the dates, behaviors, and statements that caused you to fear for the physical safety of the person or others. If possible, keep a contact list of any professionals already involved with the person (e.g. did the person recently go to chemical dependency treatment somewhere? Did they just fire their psychologist? Were they going to classes last year at a specific hospital? Have police ever transported them to a hospital—date & city of police call, etc...).
3. **If the person lives with you, the most important piece of information is WHETHER THE PERSON CAN RETURN TO YOUR HOME. The professionals need to hear loud and clear whether they can stabilize the person's crisis and send them back to your home, or whether they need to find a new living situation for this person. No matter how much you love a relative, if they make you feel unsafe in your home, or if you would need to remain awake and at home to supervise them 24/7 to keep them or yourself or others safe, it's time to take them to a hospital and let the hospital know this person cannot return to your home and why. This does not mean that you do not love the person in need. Sometimes loving someone means making very difficult decisions to protect both them and yourself or others.**
4. Often, it's impossible for a lay person to tell exactly what's wrong with a loved one—they could be abusing prescription drugs, have early-onset dementia, be bipolar, have

an eating disorder, or be in an abusive relationship. Sometimes many conditions occur all at once. Sorting out what's wrong, what needs to be treated, in what order, and whether any Court involvement is necessary, is what the professionals do. Families can panic if they think that the details of diagnosis and care coordination are the family's responsibility. It's much easier to focus on getting the person to a professional and getting information to that professional. NEVER assume the patient will give accurate information about their symptoms and behaviors. They may be unaware of what is happening to them, misperceiving their own symptoms, or in denial about their addiction/relationship issues/cognitive abilities.

County-Based Mental Health/Chemical Dependency Crisis Resources—Twin Cities Metro and some Greater Minnesota

Ordinarily, Call for Justice, LLC provides legal referrals relative to a specific legal topic. However, because of the specialized nature of civil judicial commitments, there aren't any non-government or non-hospital/treatment facility legal resources. (One exception is the Minnesota Disability Law Center, referenced at the end of this paper.) Thus, we provide a listing of the following Hennepin and Ramsey county-based mental health and chemical dependency crisis resources. (Note: there are many private agencies/organizations that provide mental health counseling or chemical dependency treatment in the Twin Cities; they are too numerous to list here, and thus the following are simply county-based resources. Readers of this training paper can call 2-1-1 for agency referrals.):

Mental Health Resources

1. Hennepin County--Community Outreach for Psychiatric Emergencies (COPE)(612-596-1223)(For adults 18 and older in Hennepin County). COPE operates a hotline 24/7 to assist when a person's severe disturbance of mood or thinking threatens that person's safety or the safety of others. If necessary, COPE will dispatch a mobile crisis team to communicate with and assess the person at issue. To accomplish the assessment the team will go to that person's physical location.

2. Hennepin County--Juvenile Crisis Line (Child Crisis)(612-348-2233)(For children 17 and younger in Hennepin County). This is the juvenile version of COPE; the Juvenile Crisis Line will help to de-escalate the crisis, provide risk assessment, develop a plan to keep the child safe, and make referrals. Just as with COPE, the Juvenile Crisis Line has a mobile team which can respond to the child's home or location.

3. Hennepin County--Front Door Services (612-348-4111)(<http://www.hennepin.us/residents/health-medical/adult-mental-health-services>.) Front Door helps to coordinate mental health services and can help with applications for voluntary mental health case management services.

- 4. Ramsey County—Urgent Care for Adult Mental Health (651-266-7900).** The Ramsey County Urgent Care Center provides crisis assessment and stabilization services by phone and outreach 24/7; walk-in services are available M-F from 8:00 a.m. to 9:00 p.m. and Sat.-Sun. from 11:00 a.m. to 3:00 p.m.
- 5. Ramsey County—Children’s Crisis Response (651-774-7000).** Children’s Crisis Response provides 24/7 on-site response to children in Ramsey County. Services include de-escalation and crisis intervention; mental health assessments; and development of a crisis plan.
- 6. Ramsey County—Community Human Services (651-266-4444).** Ramsey County’s version of front door services (see item 3 above).
- 7. Twin Cities Metro and Greater Minnesota—Crisis Connection (612-379-6363)(Toll free in Greater Minnesota: 1-866-379-6363).** Crisis Connection is a nonprofit mental health counseling agency that provides telephone counseling services specializing in crisis counseling, intervention and referral. This is a 24/7 free and confidential telephone counseling service which takes calls from anyone in need of counseling and support.
- 8. Twin Cities Metro and Greater Minnesota—National Alliance on Mental Illness—MN (NAMI-MN) (651-645-2948).** NAMI—MN is a resource for anyone attempting to navigate Minnesota’s mental health systems. The organization has created a guide, “Understanding the Minnesota Civil Commitment Process,” which attempts to provide a soup-to-nuts summary of civil commitments in Minnesota. (<http://www.namihelps.org/Civil-CommitmentSept2010.pdf>). This guide also contains an appendix with a list of mental health resources in various Minnesota counties.

Chemical Dependency Resources

- 1. Hennepin County—Project CHILD (Chemical Health Intervention, Linkage and Development)(612-879-3609).** Project CHILD works to protect unborn children whose mothers living in Hennepin County are using controlled substances or using alcohol habitually or excessively. Services include assessment, referral and case management. In addition to mandatory reporters, “concerned people” may contact Project CHILD to report a person in need.
- 2. Hennepin County—DART (Diversion and Recovery Team)(612-879-3636).** DART provides case management, housing and chemical dependency treatment for Hennepin County adults who are struggling with severe and chronic substance addictions.
- 3. Hennepin County—Rule 25 Chemical Health Assessments (612-348-4111).** Hennepin County residents who need help to pay for chemical health treatments can obtain assessments/referrals to chemical dependency treatment providers.

4. Ramsey County—Ramsey County Chemical Dependency Unit (Chemical Assessments—651-266-4008; Intake/Pre-Civil Commitment Petitions—651-266-7890). The Ramsey County Chemical Dependency Unit provides a variety of services, including detoxification, pre-civil commitment petition screening, and chemical use assessments and referrals to chemical dependency treatment agencies.

Other Resources

1. Senior LinkAge Line (1-800-333-2433) Senior LinkAge Line® is a free telephone information and assistance service, which assists older adults and their families in finding community services near them; it will also assist in evaluating their situation to determine what kind of service might be helpful.

2. Adult Protection (Hennepin County 612-348-8526; Ramsey County 651-266-4012; Call 911 if there is an immediate emergency). Any loved one or concerned person can anonymously report on a vulnerable adult (any person, 18 years of age or older, who receives services from a licensed health care facility or home care or personal care assistance provider in Minnesota, or who requires assistance to provide for his or her own care). A vulnerable adult also is unable or unlikely to report maltreatment because of their own physical or mental limitation.

3. Child Protection (Hennepin County 612-348-3552 (press 1); Ramsey County 651-266-4500 (after hours call 651-291-6795; Call 911 if there is an immediate emergency). Call to report suspected child maltreatment 24/7. Call even if you are not sure whether or not to make a report; a child protection intake screener will let you know if your information is a report of child maltreatment.

4. Minnesota Disability Law Center of Mid-Minnesota Legal Aid (1-800-292-4150, M-F 8:30-4:30). The Minnesota Disability Law Center will provide telephone advice for those who seek to secure alternative court-appointed counsel in civil commitment proceedings. Additionally, the MNDLC provides counsel to persons who are considered disabled for a variety of legal needs. There is no income restriction for these services; cases are considered on the basis of need/urgency.

Let us know if you have any questions!

Ellie and Emily, Call for Justice, LLC