

Appendix 3-1

Involuntary Commitment for Substance Abuse Treatment: Checklist for Respondents' Attorneys

This checklist applies after Special Counsel or the appointed attorney receives notice of the patient's admission. Consult the indicated forms as necessary.

Receipt and Review of Documents

- Receive the petition or affidavit from the physician or eligible psychologist, accompanied by the affidavit(s) of the examiner. This will occur by different methods depending on local practice. Counsel should inquire of the clerk of court and the records clerk of the facility to determine local practice.
- Review documents for compliance with statutory requirements.

Affidavit and Petition for Involuntary Commitment (Form AOC-SP-300)

- Is the petition signed and sworn before an authorized officer? G.S. 122C-281(a).
- Was the petition properly clocked in with a date and time stamp?
- Is box 2, alleging substance abuse and danger to self or others, checked?
- Do the allegations in the petition support on their face a finding of reasonable grounds to believe that the respondent is a substance abuser and is dangerous to self or others?
- Who does the petition indicate are witnesses to the behaviors and actions alleged in the petition?

Findings and Custody Order Involuntary Commitment (Form AOC-SP-302)

- Is the custody order properly signed and dated with the time noted by the appropriate court official?
- Is box 2, alleging substance abuse and danger to self or others under "Findings," checked?
- Is either box 1 and/or 2 checked under "Custody Order"?
- Does the "Return of Service" on the back indicate that the respondent was taken into custody within 24 hours of issuance of the custody order?
- Did the law enforcement officer complete either Section A, B, C, or D appropriately on the back of the custody order?

Affidavit of Examining Physician or Eligible Psychologist—First Examination Report (Form DMH 5-72-01, Examination and Recommendation to Determine Necessity for Involuntary Commitment)

- Was the examination performed within 24 hours of the time the respondent was taken into custody by a law enforcement officer?

- Was the first examination performed by either a physician or eligible psychologist?
- Is the examination report properly signed?
- Does the examination report indicate that the examiner performed a personal examination, and does not merely repeat the allegations of the petition?
- Do the findings of the examiner support the conclusion of a diagnosis of substance abuse?
- Do the findings of the examiner support the conclusion of a finding of danger to self or others?
- Does the examiner's report recommend substance abuse commitment?
Recommendation: _____
- Did the examiner recommend that the respondent be held at a 24-hour facility pending hearing? ____ yes ____ no

Affidavit of Physician When Respondent Held Pending Hearing—Second Examination Report (Form DMH 5-72-01, Examination and Recommendation to Determine Necessity for Involuntary Commitment)

- Was the examination performed within 24 hours of admission to a 24-hour facility?
- Was the examination performed by a physician?
- Is the examination report properly signed?
- Does the examination report indicate that the examiner performed a personal examination and did not merely repeat the allegations of the petition?
- Do the findings of the examiner support the conclusion of a diagnosis of substance abuse?
- Do the findings of the examiner support the conclusion of a finding of danger to self or others?
- Does the examiner's report recommend substance abuse commitment?
Recommendation: _____

Medical Records Review: Respondent Held Pending Hearing

- Review records in the patient's chart(s) at the 24-hour facility.
- Do Progress Notes contain staff observations of manifestation of symptoms of substance abuse?

- Do Progress Notes contain staff observations of dangerous behavior toward self or to others? _____
- Results of drug testing: _____
- Current medications: _____
- Psychological examination or other special examinations or reports?

- Any pending criminal charges or past convictions noted in the record?

Medical Records Review: Respondent Released Pending Hearing

- Consult with client regarding existence of treatment records and obtain client's consent to review or copy records.
- Contact medical records clerk and arrange to review or copy records.
- Results of drug testing: _____
- Current medications: _____
- Psychological examination or other special examinations or reports?

- Any pending criminal charges or past convictions noted in record?

Interview with Client

Attorney role:

- Meet with client as soon as possible; contact client to arrange appointment if released pending hearing
- Explain you represent client, no one else
- Inform client that he or she may retain private attorney (explain time parameters, request that retained attorney call you, request to be on stand-by in event retained attorney does not appear)
- Explain that representation for commitment proceeding only

Explanation of proceeding:

- Special proceeding reviewing hospitalization, jail not a possibility
- Hearing before judge, but not in regular courtroom (describe hearing room)
- Confidential proceeding, hearing, and court file
- Time and date of hearing
- Venue—right to transfer if respondent held in 24-hour facility pending hearing and petition initiated in another county
- No waiver of appearance
- Witnesses for State and for client may be called
- Continuance may be requested by client, State, or responsible professional, or may be on motion of the court

Discussion of case:

- Review allegations of petition—get client's side of events (attach interview notes)
- Discuss medical evidence
- Ask what treating treatment provider has told client about treatment recommendation
- Ask client if there are prior commitments or other information on substance abuse or danger that might be raised by State's witnesses

- Explain consequences of substance abuse commitment: ____ driver's license
____ firearms ____ military
- Does client have alternative plan to substance abuse commitment (voluntary treatment program, attendance at AA or NA meetings, etc.)?
- Client states would agree to (sign as voluntary, continuance if pending unconditional discharge, etc.) _____
- Discuss possible witnesses; obtain client consent to contact/subpoena
- Advise of possible technical motions (e.g., motion to dismiss for failure of petition to be signed but possibility of new petition)

Explanation of hearing procedures:

- Attorney for State or petitioner to call witnesses—possibly petitioner, psychiatrist, social worker, staff, or family
- Witnesses for client—discuss allegations, likely witnesses, advisability of client testifying
- Courtroom demeanor—not get upset, not speak unless testifying, stay seated unless called to testify, whisper quietly or write note if need to communicate with attorney
- Closing arguments—client should not react or speak during

Client's position:

- ____ Contest ____ Not contest
- ____ Agrees to venue ____ Requests change of venue (if held pending hearing)
- ____ Agrees to (sign in as voluntary patient, shorter inpatient stay, outpatient commitment, continuance, etc.): _____
- ____ Move to continue Reason: _____

Follow-up to Client Interview

- Notify opposing counsel, appropriate court personnel of result (contest/not contest)
- Negotiate with opposing counsel or psychiatrist as appropriate for desired client result (what client would agree to)
- Contact witnesses to discuss case
- Subpoena witnesses as necessary
- Meet with client as necessary to discuss results of negotiation, information from witnesses
- Prepare for hearing: motions, questions, relevant case law

Action needed:

___ Motion to dismiss Reason: _____

___ Motion to continue Reason: _____

___ Contested hearing: ___ Client appear

 ___ Not appear

___ Not contested: ___ Client appear

 ___ Not appear

Client agrees to:

___ Inpatient

___ Outpatient

___ Split: ___ Inpatient stay ___ Outpatient

___ Client signed voluntary

___ Client was discharged

Follow-up to Hearing When Client Committed

- ❑ Discuss order with client, reiterate that amount of days committed is *maximum* substance abuse commitment without rehearing and that can be discharged from commitment sooner
- ❑ Commitment is to treatment of area authority or physician, not facility— importance of cooperation
- ❑ Maximum of 45 consecutive days of inpatient treatment without supplemental hearing
- ❑ Representation continues for duration of commitment and through any appeal
- ❑ Advise of appeal right, discuss limitations (length of time to appeal, likely discharge or rehearing well before appeal decided)