

# **Involuntary Admissions & Treatment**

## **Facts and Procedures**

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# How do you get patient to mental health facility?

**1. Patient goes voluntarily:** Patient gets in car with you and you drive them to the hospital.

**2. Certification by own doctor:**

If Doctor finds patient certifiable, he can fill out certificate (doctor, especially a psychiatrist, should have a blank copy available per VK). Then Petitioner fills out petition and then petitioner either drives R to hospital, calls an ambulance to transport R to hospital, or calls police to pick up Respondent. See § 405 ILCS 5/3-605. [County sheriff; duties]: (a) In counties with a population of 3,000,000 or more, upon receipt of a petition and certificate prepared pursuant to this Article, the county sheriff of the county in which a respondent is found shall take a respondent into custody and transport him to a mental health facility.

**3. Patient is driven to MHHF by police:**

Police on their own can decide to detain Respondent and transport to MHHF if have reasonable grounds to believe....that it's necessary to protect Respondent from serious physical harm. Make sure PO's name and badge number is on petition. See § 405 ILCS 5/3-606: A peace officer may take a person into custody and transport him to a mental health facility when the peace officer has reasonable grounds to believe that the person is subject to involuntary admission and in need of immediate hospitalization to protect such person or others from physical harm.

**4. Obtain an Order for Detention and Exam (Writ) prepared at 69 W. Washington:**

§ 405 ILCS 5/3-607. Court ordered temporary detention and examination: Court ordered temporary detention and examination. When, as a result of personal observation and testimony in open court, any court has reasonable grounds to believe that a person appearing before it is subject to involuntary admission on an inpatient basis and in need of immediate hospitalization to protect such person or others from physical harm, the court may enter an order for the temporary detention and examination of such person.

**5. Obtain you own attorney:**

Obtain your own attorney to assist you with filing a Petition after getting Certificates filled out by 2 psychiatrists. See number 1 above. This option is especially practical when you have already hired an attorney to assist you with petitioning for Guardianship, as guardianship and mental health issues are often inter-mingled, and the patient's doctor is reluctant to take charge. Make sure you find an attorney who is experienced in mental health law. In many cases, one hospitalization is not the end of the problem, and an attorney can not only hold your hand in time of turmoil but give you the direction you need to make good choices about future plans of actions. Also, if a guardianship is established, funds to pay the attorney make be payable out of the Guardianship estate.

## AFTER TRANSPORTING PATIENT TO THE HOSPITAL, WHAT HAPPENS NEXT?

- Subject will be examined by two mental health professionals (at least one psychiatrist) within approximately 48 hours of arrival at the hospital.
- Ultimately, the hospital makes the decision whether to admit someone.
- Most of the cases do not proceed to trial (subjects agree to voluntary hospitalization or improve and are discharged before trial).
- Do not think that because you sign the petition you will automatically be called to testify. Most cases do not go to hearing.
- If patient signs in voluntarily, case is dropped. What capacity is needed?
- If patient refuses to sign in, doctor will decide whether or not to proceed to a trial for involuntary commitment or involuntary treatment.
- After a trial, the patient may be involuntarily committed or treated. For how long?
- Before or after a trial, patient may agree to abide by the provisions of an outpatient order which details the treatment plan.

# WHEN IS INVOLUNTARY ADMISSION APPROPRIATE?

- The subject refuses voluntary admission.
- The subject is mentally ill or mentally retarded.
- Mental illness has a broad definition:
  - “a mental, or emotional disorder that substantially impairs a person’s thought, perception of reality, emotional process, judgment, behavior or ability to cope with the ordinary demands of life, but does not include a developmental disability, dementia, or Alzheimer’s disease, or Alzheimer’s disease absent psychosis, a substance abuse disorder, or an abnormality manifested only by repeated criminal or otherwise antisocial conduct.”
  - Alcoholism or drug use alone does not constitute mental illness.
  - Dementia or Alzheimer’s, absent psychosis, does not constitute mental illness.
- Mental retardation means:
  - significantly sub-average general intellectual functioning which exists concurrently with impairment in adaptive behavior which originates before the age of 18 years.
  - Can be involuntarily committed if subject is mentally retarded and is reasonably expected to inflict serious physical harm upon himself or others in the near future.
  - We are focusing on mental illness and not mental retardation as a basis for involuntary admission in this presentation.

Criteria that need to be met for Involuntary Commitment:

In order to seek involuntary admission, subject must have mental illness, be currently symptomatic, and meet one or more of the following criteria:

- (1) Because of his mental illness, the subject is reasonably expected, unless treated on an inpatient basis, to engage in conduct placing such person or another in physical harm or in reasonable expectation of being physically harmed.

Examples of being in reasonable expectation of being physically harmed:

- Danger to self—suicide attempts (infrictions of self-harm), written or verbal suicide threats
- Danger to others—actual physical attacks towards another, threats of physical harm towards an individual especially if a history of violence

### Examples of Physical Harm

- Danger to self—suicide attempts (infections of self-harm), written or verbal suicide threats
- Danger to others—actual physical attacks towards another, threats of physical harm towards an individual especially if a history of violence

### 2) Examples of Unable to Provide for Basic Physical Needs:

- Look to whether the subject has stopped eating (usually accompanied by weight loss), bathing, dressing appropriately for the weather, sleeping or taking medications for a medical condition (e.g. Diabetes).
- Subject must be able to provide for basic physical needs without the assistance of family or outside help. (this is new law which helps families)
- Failing to take psychotropic medications alone does not meet criteria for involuntary admission.
- Being homeless in and of itself is not sufficient to show unable.

### 3) Example of Deterioration Due to Non-compliance:

- Patient has a history of mental illness and episodes of non-compliance resulting in his inability to take care of his basic physical needs or resulting in behavior that is threatening to himself or another. (new law)

## Involuntary Commitment continued:

Commitment period is 90 days (with renewal periods).

First renewal is 90 days and second renewal is 180 days from then on.  
as long as petition is filed before expiration of preceding. 5/3-813

Commitment must be to least restrictive setting, which usually is mental health facility but can be nursing home, group home, etc.

If patient has a Power of Attorney for Health Care or a Declaration for Mental Health Care, patient, patient may be committed or treated through agency law.

Always tell the hospital if patient has executed a Power of Attorney, even if you are not the agent.

A Guardian cannot consent to the admission of patient, unless the patient also agrees to be admitted or medicated (which in that case you would not need to file).

If patient has a Guardian, Guardian must receive notice of any hearings.

# When is Involuntary Treatment appropriate?

What is involuntary treatment? (Medication and/or ECT)

When is involuntary treatment sought?

What is the procedure to obtain an Order for Involuntary Treatment?

Can involuntary treatment be administered as an Outpatient?

Not realistic unless incorporated into some type of commitment order,  
e.g. commitment to least restrictive or agreed order for commitment.

What must evidence must be shown to successfully obtain an Order?

All of the following must be shown:

1. Patient has Mental Illness
2. Patient is symptomatic – describe symptoms
3. Patient is displaying one or more of the following: deterioration of ability to function, suffering, or threatening.
4. The mental illness has existed for a period of time marked by the continuing presence of symptoms – it is not a one time incident that is no longer present.
5. The benefits of treatment will outweigh the harm.
6. The patient lacks the capacity to consent to the treatment.
7. Other less restrictive services were considered and found inappropriate.
8. Describe certain testing is needed for the safe administration of treatment.
9. A good faith attempt was made to determine whether the patient has a Power of Attorney for Health Care or a Declaration for Mental Health Treatment.

Remember “least restrictive” requirement.

Make sure you tell hospital of existence of a Power of Attorney even if you are not the agent.



## AGREED ORDERS FOR ADMISSION ON AN OUTPATIENT BASIS

- Requires “agreement,” i.e. cooperation
- Can be used only if patient would be subject to involuntary commitment.
- Sets forth provisions for treatment plan, including:
  - Written recommendation by doctor, including details of treatment plan, such as requirements to attend outpatient appointments, counseling or other therapies, may delineate place of residence, etc.
  - May include medication
  - Realistically requires a custodian to monitor patient’s compliance with order.
- Judge admonishes both Patient and Custodian in open court about their responsibilities under the Order and their willingness to cooperate, and judge will expect both Custodian and Respondent to indicate their agreement in court.
- Does not constitute a finding that patient is subject to involuntary commitment.
- Custodian can bring patient back to hospital if patient does not comply with order. Patient will be admitted with a voluntary status. Custodian can get help of police to transport Patient back to hospital.
- This Order is in effect for a period “not to exceed” 180 days, which is longer than the 90 day maximum for initial court-ordered commitment resulting from a hearing/trial on the Petition for Involuntary Commitment.

## Advantage of Using an Agreed Order for Admission on an Outpatient Basis

- The more therapeutic approach is always to have Patient participate in his or her treatment plan by understanding the plan and agreeing to it.
- Empowers Patient to be responsible for his or her own care.
- Gives Patient structure so he or she knows exactly what is expected from him or her, and patient has the treatment plan in writing.
- Gives something to “hold over Patient’s head” to encourage compliance.
- Gives family a plan in the event of non-compliance (return to MHHF).
- If entered into before hearing, will eliminate the need for family to testify “against” a loved one, which may create hopefully temporary hurt feelings, resentment.
- You must have realistic expectations of the patient’s willingness to cooperate and the patient’s ability to cooperate, or this could be a big waste of time and a huge disappointment.
- Given the appropriate patient, this can be a empowering tool, even if there are occasional setbacks.

# Additional Tools to getting the appropriate Mental Health Treatment for your loved one

## Power of Attorney for Health Care

- Revocable – and easily revoked
- Mental Health Facility decides if acceptable
- No expiration date
- Requires signature of patient so need patient cooperation

## Power of Attorney for Property

- Agent can apply for any benefits for patient such as SSDI
- Requires signature of patient so need patient cooperation

## Declaration for Mental Health Care Treatment

- Irrevocable
- Doctor must sign and fill in appropriate treatment/medications
- Lasts 3 years
- Requires signature of patient so need patient cooperation

## Guardianship: of Person and of Estate/Property

### Guardian of Person:

- Will not allow Guardian to sign in or medicate patient
  - Will allow Guardian to communicate with health care provider
  - May allow you to petition the probate court for long term placement
- ### Guardian of the Estate:
- Will allow Guardian to apply for any benefits