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## P&A FACT SHEET

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# Involuntary Mental Health Commitments

### What Is an Involuntary Mental Health Commitment?

An involuntary mental health commitment is the way that a Probate Court Judge can order you to have mental health treatment, even if you do not want treatment. Although most adults have a right to refuse medical treatment, the commitment process creates an exception. The Probate Court may order treatment if you have a mental illness, you need treatment, and you meet the legal commitment standards.

There are two processes for adult mental health commitment: (1) emergency and (2) judicial.

The emergency process is used when you are an immediate harm to yourself or to others. In an emergency, you may be taken into custody immediately and admitted for treatment against your will.

The judicial process is used when there is not an emergency, but someone (usually a family member) believes you need mental health treatment even if you do not want treatment. You do not have to be detained while you wait on the Court to decide in a non-emergency situation.

In both emergency and non-emergency situations, the Court must hold a hearing before finding that you continue to need mental health treatment.

This fact sheet outlines both emergency and judicial mental health commitment procedures for adults. It does not talk about commitment for chemical dependency (alcohol or drug addiction) or commitment procedures for children.

## What Happens If You Have Immediate Need for Mental Health Treatment? (Emergency Process for Commitment)

### *Who starts the process?*

Any person may file an "Affidavit," a writing signed under oath, stating (1) that he or she believes you have a mental illness and are likely to cause serious harm to yourself or others if not immediately hospitalized, and (2) the specific reasons why he or she believes that about you. S.C. Code § 44-17-410. Usually, this person is a family member or an emergency responder such as Emergency Medical Service (EMS), who must have observed your actions first-hand.

Serious harm means a substantial risk of physical harm or injury to you or to others. S.C. Code § 44-23-10.

If you are not already in a medical facility, such as a mental health center or a hospital, you may be detained. Usually that means that a member of law enforcement will take you to a hospital emergency room where you will be examined by a physician (medical doctor). You are not under arrest, but you cannot leave until you are examined by the doctor, and the doctor determines that you do not meet the standard for commitment. The hospital will release you if you do not meet the standard.

### *Is there anything else needed for Emergency Commitment?*

Yes. A medical doctor must examine you. The doctor must certify in writing:

1. You have a mental illness;
2. Because of the illness, you are likely to cause harm to yourself or others unless you get treatment in a hospital; and
3. The specific reasons why you are likely to cause harm if you do not get treatment.

If you were detained by law enforcement, the doctor must examine you within 24 hours of being taken into custody. If the doctor finds all three criteria are met, the doctor must complete and sign a document called a "Certification."

Note: The doctor who signs the Certification must be different from the individual who signed the Affidavit.

If both the Affidavit and the doctor's Certification are completed, they authorize you to be admitted involuntarily to a psychiatric hospital for further evaluation and possible treatment. In most cases, you will be transported to the psychiatric hospital from the emergency room by law enforcement. You are not under arrest, but cannot leave the hospital without permission. S.C. Code § 44-17-410(b) (2).

*What if the doctor does not examine you within 24 hours or the doctor does not complete a Certification?*

If the doctor does not examine you within 24 hours from the time you are taken into custody, you must be released. Even if it is a weekend or holiday, the doctor must examine you within 24 hours. If the doctor does examine you, but does not think you meet the standard, he or she will not fill out the Certification, and you must then be released. S.C. Code § 44-17-430.

*If I am admitted involuntarily to a hospital, how long must I stay there?*

Within 48 hours of your admission involuntarily to a psychiatric hospital, the Affidavit and Certification must be sent to the Probate Court. Within 48 hours of receiving these documents, the Court must review them to see if there is probable cause to continue your emergency involuntary hospitalization. (Saturdays, Sundays, and holidays do not count toward the 48 hours). Probable cause means there is a reasonable likelihood that the information in the Affidavit and the Certification is correct. In other words, the Affidavit and Certification must indicate that there are still good reasons for an emergency commitment. S.C. Code § 44-17-410.

*What happens if the Court finds there is "probable cause"?*

If the Court finds that there is probable cause, the Court will:

- Issue an order for your continued involuntary hospitalization. (Called the "Order for Continued Hospitalization," this order is valid only until you are examined or until a hearing is held.); and
- Issue an order appointing two mental health care professionals as "Designated Examiners" to examine you. One must be a medical doctor. The other one is usually the social worker working with you in the hospital.

If the Court determines that there is not probable cause, then it issues an Order for your immediate release from the hospital and for your case to be dismissed.

**What Do the Results From the Exam Mean?**

- The Designated Examiners (sometimes called "DEs") must decide if you meet the standard of having a mental illness and being likely to cause serious harm to yourself or others.
- If both DEs find you do not meet the standard, then you are released and the case is dismissed.
- If one DE finds you meet the standard and the other does not, the Court might dismiss the case, or the Court might ask a third examiner to examine you.
- If two DEs find you meet the standard, then the Probate Court must hold a commitment hearing within fifteen (15) days of the date of your admission to the hospital.

*Can I ask for an independent DE?*

Yes. If you cannot afford one, then the state will pay for the exam. S.C. Code § 44-17-530.

*If there is a hearing, will I have a lawyer?*

Yes. The Court will appoint an attorney to represent you, unless you have an attorney. Generally, the attorney appointed to represent you also serves as your Guardian ad Litem (GAL). As your attorney, he or she must advocate for what you want. As your GAL, he or she must advocate for what is in your best interest. Because these two points of view may be different, you may want to find an attorney on your own, or you may want to ask the Court to appoint an attorney who is not also your GAL. If the Court denies your request, contact P&A. Keep in mind that trying to get a new attorney could delay your hearing and may mean a longer stay in the hospital. If you choose to find an attorney on your own, have your attorney contact the Probate Court prior to the hearing so that he or she can be included in the notice of the hearing.

**The Full Probate Court Hearing:**

*What are my rights?*

- Before the hearing, your attorney should meet with you. Your attorney should explain your rights, review the DE reports with you, prepare to present any witnesses you have, and answer your questions.
- A full hearing must be held within 15 calendar days of your involuntary admission to the hospital. S.C. Code § 44-17-410.
- The Court must tell you the date and time of your hearing at least 5 business days before the hearing. S.C. Code § 44-17-420.
- You have a right to have an attorney with you. S.C. Code § 44-22-30.
- You have a right to be present at the hearing. S.C. Code § 44-17-570.
- You and your attorney have a right to bring witnesses and ask questions of them. S.C. Code § 44-17-570.
- You and your attorney can ask questions of any other witnesses. S.C. Code § 44-17-570.
- If you can, try to take notes during the hearing. If you want to appeal, an attorney is in a better position to help you if you have detailed notes of the hearing.

*How does the Court decide if I need treatment?*

- The Court can require treatment if you meet the following standard:
  - The Court must find you have a mental illness and you need treatment.

- The Court must also find because of the mental illness either (1) you do not have the ability to make good choices about your treatment, or (2) you are likely to cause serious harm to self or others.
- The Court must have clear and convincing evidence (strong facts) to order treatment. S.C. Code § 44-17-580.

### *Can I appeal the decision the Court makes?*

Yes. You have a right to appeal after the hearing. S.C. Code § 44-17-620.

- You may appeal any treatment or commitment order following the hearing. You appeal to the Circuit Court.
- You must tell both the Probate Court and the Circuit Court that you want to appeal and the reasons for the appeal **within 15 calendar days** of the date of the order. You must act quickly if you want to appeal.
- You must pay for filing the appeal, unless the Court finds that you cannot afford to.
- If you have questions about bringing an appeal, you may contact P&A. If you want to ask P&A to represent you in an appeal, you must contact P&A as soon as possible after the hearing.

### *What Happens After the Hearing?*

- If the Probate Court finds you do not meet the standard, the court will dismiss your case. If you are in a hospital, you will be able to leave.
- If the Probate Court finds you meet the standard, the Court can order:
  - In-patient treatment at a public or private mental health hospital;
  - Out-patient treatment at a public or private mental health facility;
  - or
  - Out-patient treatment following in-patient treatment.

### *What Should I Do if I am Being Committed?*

- Listen to your attorney and the health professionals around you. If you do not agree with them, explain why not.
- **Follow the Court's order. If you do not agree with the Court order, your only option is to file an appeal or other motion with the Court.** If you are released from the hospital but have been ordered to receive out-patient treatment and do not attend that treatment, the facility must report you to the Court. The Court will have another hearing, and **you can be re-committed or even sent to jail** for not following the Court order.
- Learn about self-advocacy. P&A has brochures and is available to train individuals on how they can better advocate for their rights.

### What Are My Rights to Be Released After Commitment?

- The facility can discharge you whenever your condition has improved to the point that you no longer meet the standard. S.C. Code § 44-22-70.
- If you disagree with the facility about whether you continue to meet the standard, you or any "interested person" can ask the Court for a re-examination. S.C. Code § 44-17-630.
  - An "interested person" is your parent, guardian, spouse, adult next of kin, or nearest friend. S.C. Code § 44-23-10(9).
- You can ask for re-examination every six months.
- The treatment facility must inform you and at least one other interested person of this right every six months. S.C. Code § 44-17-630.

### What Is the Difference Between the Emergency Commitment Process and Judicial Commitment Processes?

In an emergency admission, anyone can start the process (for example, an EMS worker who is called to the scene). A judicial commitment is different because only an "interested person" or a superintendent of a mental institution can start the process. S.C. Code § 44-17-510. An "interested person" is your parent, guardian, spouse, adult next of kin, or nearest friend (someone who helps you do things you could not do on your own, such as drive you to doctors' appointments). S.C. Code § 44-23-10(9).

Also different from the emergency process, is that in a judicial commitment, an interested person can ask the Probate Court to order you to have mental health treatment because he or she thinks you do not have the ability to make responsible decisions about your treatment. The document that is completed is a "Petition for Judicial Commitment." In most counties, this Petition is prepared with an intake staff person at the local mental health clinic. This process does NOT start at the Probate Court since it would create a conflict of interest if the Court later hears your case.

In an emergency admission you are taken into protective custody to have an exam. A judicial commitment is different in that before a judicial commitment process can start, a medical doctor must examine you and tell the Court if he or she thinks you have a mental illness and should be committed. If you do not want to have the exam, the interested person can give the Probate Court a statement saying you do not want the exam. Then, the Probate Court can order a law enforcement officer to take you into custody to have an exam. The difference is that in a judicial commitment you can agree to have the exam in the community, instead of in a hospital.

Once you are judicially committed, it will be up to the doctor to determine if you should be released. You can ask the Court to be re-examined once every six months.

### Where Can I Get Help?

The Department of Mental Health Client Advocacy Program has advocates who can give you information and may be able to help you if you are in a DMH facility. You can contact the Client Advocacy Program at (803) 898-8569 or Toll Free at 1-866-300-9330.

If you believe that you have been abused or neglected in a DMH facility, contact the State Law Enforcement Division (SLED). Their telephone number is 1-866-200-6066. You may also contact the Client Advocacy Program or P&A. If you believe that you have been abused or neglected in a privately-operated facility, contact local law enforcement. You may also contact P&A.

The S.C. Code sections mentioned in this brochure can be found on-line at <http://www.scstatehouse.gov/code/title44.php>. If you do not have access to the internet, you can ask your social worker to print a copy of the relevant sections of the S.C. Code. If your social worker cannot help you or if you have trouble finding what you need, contact P&A for help.

This publication provides legal information, but is not intended to be legal advice. The information was based on the law at the time it was written. As the law may change, please contact P&A for updates.

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