

# Understanding the Minnesota Civil Commitment Process

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ADULTS



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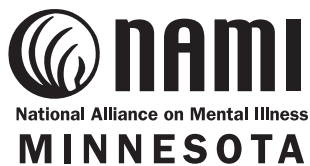
National Alliance on Mental Illness

**MINNESOTA**

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NAMI Minnesota champions justice, dignity, and respect for all people affected by mental illnesses. Through education, support, and advocacy we strive to effect positive changes in the mental health system, and increase the public and professional understanding of mental illnesses.

# UNDERSTANDING THE MINNESOTA CIVIL COMMITMENT PROCESS

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## INTRODUCTION

Mental illnesses are very common. One in five adults will develop a mental illness during their lifetime. Mental illnesses are biological brain disorders that affect a person's thoughts, feelings, mood and ability to relate to others. Examples include major depression, schizophrenia, generalized anxiety disorder, panic disorder, Borderline Personality Disorder, post-traumatic stress disorder, schizoaffective disorder, eating disorders, and bipolar disorder.

People with a mental illness can and do recover with access to treatment, services and support. There are evidence-based services that can help with recovery and there are treatment engagement strategies using peer specialists that can also be helpful.

Sometimes people stop taking their medications or the medication stops working; people stop going to therapy; people begin using alcohol or drugs. When this happens, the person's symptoms may increase and the person may become isolated.

In addition, some individuals with a mental illness have *anosognosia*, meaning that they do not believe they have a mental illness. They do not acknowledge their symptoms or have insight into their illness and thus do not think they need treatment.

All of these things can result in people with mental illnesses not being able to care for themselves or becoming a danger to themselves or to others.

In these situations, it may become necessary to have a court order the person into treatment. The process of obtaining a court order for involuntary treatment is called the civil commitment process.

The civil commitment process is also used for people with substance use disorders but we will focus on mental illnesses in this booklet.

*The civil commitment process has two main purposes:*

1. To treat persons with mental illnesses when they are unable or unwilling to seek treatment voluntarily
2. To protect the person with a mental illness and others from harm due to the illness

The civil commitment process involves the legal system and can be confusing or intimidating for individuals with mental illnesses and their families. Civil commitment can be an emotionally difficult path to take and is a last resort, when nothing else has worked.

This booklet is designed to help individuals and families understand the process. First, this booklet provides suggestions for handling a

mental health crisis followed by alternatives to involuntary commitment. Then, it outlines the steps involved in the civil commitment process. Next, it explains what happens if a person with a mental illness is committed. Finally, there is a list of county-specific commitment information and additional resources.

Throughout the booklet, people provide advice and comments about the civil commitment process. It is not an easy process and families need to understand the process and be strong advocates for treatment. ■

***“While initially my son was upset with the family over his commitment, in the end he was thankful. He now lives in an apartment with community supports and is working. Without the commitment, I don’t want to think about where he would have ended up.”***

**—PARENT**

## **MENTAL HEALTH CRISIS**

### **What is a Mental Health Crisis?**

A crisis is any situation in which a person’s behaviors puts them at risk of hurting themselves or others and/or when they are not able to resolve the situation with the skills and resources available.

Minnesota law on mobile crisis teams defines a mental health crisis as a “behavioral, emotional, or psychiatric situation which, but for the provision of crisis response services, would likely result in significantly reduced levels of functioning in primary activities of daily living, or in an emergency situation, or in the placement of the recipient in a more restrictive setting, including but not limited to, inpatient hospitalization.”

### **What Causes a Mental Health Crisis?**

Many things can lead to a mental health crisis. Increased stress, physical illness, problems at work or school, changes in family situations, trauma/violence at home or in the community, or substance use may trigger an increase in behaviors or symptoms that lead to a crisis. These issues are difficult for everyone, but they can be especially hard for someone with a mental illness.

*Here are some examples of situations or stressors that can trigger a mental health crisis:*

### **HOME OR ENVIRONMENTAL TRIGGERS**

- ▶ Changes to family structure
- ▶ Changes in relationship with boyfriend, girlfriend, partner, spouse
- ▶ Changes in friendships
- ▶ Loss of any kind: family member or friend due to death or relocation, pet's death
- ▶ Strained relationships with roommates, loved ones
- ▶ Conflict or arguments with loved ones or friends
- ▶ Trauma or exposure to violence
- ▶ Poverty
- ▶ Social isolation

### **SCHOOL/WORK TRIGGERS**

- ▶ Worrying about upcoming projects or tasks
- ▶ Feeling singled out by co-workers/peers; feelings of loneliness
- ▶ Mounting pressures, anxiety about deadlines
- ▶ Lack of understanding from peers, co-workers, teachers or supervisors who may not understand that behaviors are symptoms
- ▶ Real or perceived discrimination
- ▶ Failing grades, losing a job

### **OTHER TRIGGERS**

- ▶ Stops taking medication or misses doses
- ▶ Starts new medication or new dosage of current medication
- ▶ Medication stops working
- ▶ Use or abuse of drugs or alcohol
- ▶ Pending court dates
- ▶ Being in crowds or large groups of people
- ▶ Community violence or trauma
- ▶ Major crisis in the world such as natural disaster, terrorism, pandemic

## **What are the Warning Signs of the Crisis?**

Sometimes family, friends or co-workers observe changes in a person's behavior that may indicate an impending crisis, while other times the crisis occurs suddenly and without warning. You may be able to de-escalate or prevent a crisis by identifying any early changes in a person's behavior, such as an unusual reaction to daily tasks or an increase in their stress level. It may be useful to keep a journal or calendar documenting what preceded the behaviors that are of concern.

*Here are some warning signs of a mental health crisis:*

**INABILITY TO COPE WITH DAILY TASKS**

- ▶ Doesn't bathe, brush teeth, comb or brush hair
- ▶ Refuses to eat or eats too much
- ▶ Sleeps all day, refuses to get out of bed
- ▶ Doesn't sleep or sleeps for very short periods of time

**RAPID MOOD SWINGS**

- ▶ Increased energy level
- ▶ Inability to stay still, pacing
- ▶ Suddenly depressed, withdrawn
- ▶ Suddenly happy or calm after period of depression

**INCREASED AGITATION**

- ▶ Makes verbal threats
- ▶ Violent, out-of-control behavior
- ▶ Destroys property
- ▶ Culturally inappropriate language or behavior

**DISPLAYS ABUSIVE BEHAVIOR**

- ▶ Harmful acts
- ▶ Cutting, burning or other self-injurious behaviors
- ▶ Uses or abuses alcohol or drugs

**LOSES TOUCH WITH REALITY (PSYCHOSIS)**

- ▶ Unable to recognize family or friends
- ▶ Seems afraid or fearful
- ▶ Thinks they are someone they are not
- ▶ Does not understand what people are saying
- ▶ Hears voices
- ▶ Sees things that are not there
- ▶ Talks to themselves when no one is around

**ISOLATION FROM SCHOOL, WORK, FAMILY, FRIENDS**

- ▶ Decreased interest in usual recreational activities
- ▶ Changes in friendships
- ▶ Stops going to school or work

**UNEXPLAINED PHYSICAL SYMPTOMS**

- ▶ Facial expressions look different
- ▶ Increase in headaches, stomach aches
- ▶ Complains they don't feel well



## What are the Warning Signs of Suicide?

People who take their own lives may exhibit one or more warning signs, either through what they say, what they do, or moods and feelings that you detect.

An individual who is suicidal may talk directly about wanting to die or about taking their life. They may be more indirect and talk about having no reason to live, not wanting to be a burden to others, feeling trapped or experiencing unbearable pain.

A person's suicide risk increases if a behavior is new or worsens, especially if it's related to a painful event, loss or change. You may see an increase in alcohol or drug use, reckless and/or aggressive behavior, isolation, sleeping or eating too much or too little, or giving away prized possessions. They may also be searching online for ways to take their life and acquiring the means to do so. You may observe that they have withdrawn from activities that they once enjoyed or that they have visited or called people to say goodbye. They may become preoccupied with death and begin to put their affairs in order.

You may detect anything from a change in mood to extreme mood swings. These changes may be expressed through irritability, unexplained rage, feelings of humiliation, and/or increased anxiety and depression. You may also observe an unexplained peacefulness or calmness that can indicate that they have created a plan for their suicide.

The more warning signs you see, the greater the risk. They need immediate care by a mental health professional or doctor. The National Suicide Prevention Lifeline is available 24/7 for crisis counseling. **Suicide Lifeline: 1-800-273-TALK (8255), or text MN to 741741.** **Veterans** can call the Suicide Lifeline and press "1." **Farmers and rural Minnesotans** can call (833) 600-2670 for specialized support. The Trevor Lifeline is available for the **LGBTQ+ community** by calling 1-866-488-7386.

## What to Do in a Mental Health Crisis

When a mental health crisis or severe behaviors occur, friends and family often don't know what to do. The behaviors of a person experiencing a crisis can be unpredictable and can change dramatically without warning.

If you are worried that your loved one is in crisis or nearing a crisis, seek help. Assess the situation before deciding whom to call. Is the person in danger of hurting themselves, others or property? Do you

need emergency assistance? Do you have time to start with a phone call for guidance and support from a mental health professional? **Most importantly—safety first! In a crisis situation, when in doubt, go out.**

### ***Not in immediate danger***

If you do not believe your loved one is in immediate danger, call a psychiatrist, clinic nurse, therapist, case manager or family physician that is familiar with the person's history. This professional can help assess the situation and offer advice. The professional may be able to obtain an appointment or admit the person to the hospital. If you cannot reach someone and the situation is worsening, do not continue to wait for a return call. Take another action, such as calling your county mental health crisis team. **If safety is a concern, call 911.** However, be sure to tell them this is a mental health crisis (See "immediate danger" section for additional information.)

## **Mental Health Crisis Phone Lines and Crisis Response Teams**

In Minnesota, each county has a 24-hour mental health crisis phone line for both adults and children. Some 24-hour phone lines serve more than one county. These crisis lines are staffed by mental health professionals and practitioners who assist callers with their mental health crises, make referrals and contact emergency services if necessary. If the call is made after normal business hours, the crisis line will connect the caller to a mental health professional within 30 minutes. Right now, there are more than 40 crisis numbers, but you can call \*\*CRISIS from a cell phone and be connected. All numbers are posted on the NAMI website: [www.namimn.org](http://www.namimn.org).

In addition to 24-hour crisis phone lines, counties also have a mobile crisis response team. Mobile crisis teams are teams of two or more licensed mental health professionals or practitioners that can meet the person at the scene of the crisis or wherever the person feels most comfortable. Response times for mobile teams may vary depending on your location and the location of the mobile team staff.

Crisis teams are meant to be accessible to anyone in the community at any time. They are available 24 hours a day, seven days a week and 365 days a year to meet face-to-face with a person in a mental health crisis, conduct a mental health crisis assessment and create a crisis treatment plan. A person does not have to have a mental health diagnosis to receive crisis services. Crisis teams will respond and address the situation regardless of whether or not the person has insurance. If the individual

in crisis does have insurance, the crisis team will bill their insurance company for services they provide. Crisis teams offer interpreter services for non-English speakers who require assistance, although those who need an interpreter may have to wait longer to receive crisis services depending on the interpreter's availability.

*Ways that crisis teams can help:*

- ▶ Cope with immediate stressors
- ▶ Develop practical behavioral strategies to address the person's short term needs
- ▶ Identify what issues led to the crisis
- ▶ Suggest techniques to avoid a crisis in the future
- ▶ Conduct a diagnostic assessment
- ▶ Identify available resources and supports
- ▶ Develop and write a crisis plan
- ▶ Provide phone consultation and support
- ▶ Make a referral to a crisis home or hospital
- ▶ Consult with outside mental health professionals as needed
- ▶ Respond in non-urgent situations to help prevent a future crisis

Teams can talk with the person calling, not just the person in crisis before responding. Crisis teams must work to engage people in voluntary treatment, and the treatment plan must include information about how that will be done. This means that they can come back if the person initially refuses treatment. Instead of simply providing a referral to a service, the team must decide if the person can follow up on the referral and if not, ensure a "warm hand-off," to a provider.

Families and caregivers are recognized for the important role that they can play. Teams are required to obtain information and the person's history from the family or caregiver and provide family psychoeducation. Advance directives can be very helpful and so the team must determine if a person has an advance psychiatric directive and if they do not, help them to develop one when appropriate (see page 28).

Crisis teams can assist people who are experiencing a co-occurring disorder (mental illness and substance use disorder) as long as they don't need detox level of care.

*Questions the crisis team may ask:*

- ▶ Your name and the name of the person in crisis
- ▶ Your relationship to that person
- ▶ The address where the crisis is occurring
- ▶ A phone number to call in case you are disconnected
- ▶ The nature of the problem
- ▶ If safety is a concern
- ▶ If the person has harmed themselves or is threatening harm

- ▶ The possible cause of the crisis
- ▶ Mental health and hospitalization history
- ▶ Health insurance information

When you call your mental health crisis team, they will determine the level of crisis service needed. If the person experiencing a crisis is in immediate danger to themselves or others, the crisis team will refer the situation to 911, and law enforcement will respond. Sometimes both law enforcement and crisis team staff will respond together. If the situation is non-urgent, the crisis team will assess the level of intervention required: information and referral, a phone consultation, an emergency room visit or an immediate site visit.

When the crisis team makes a site visit, they assess the situation to determine if the person is a danger to themselves or others. Crisis staff may decide that law enforcement needs to intervene, that the person should be seen at the nearest emergency room or that the person should be directly admitted to a psychiatric unit at the nearest hospital. If the person is willing to go to the hospital voluntarily, the crisis team will decide how the person can safely be transported—by the family, the crisis team, police or ambulance. Whenever possible, the person should be transported in an unmarked vehicle.

A new mode of transportation under Medical Assistance will be available soon. Called *protected transport*, it is for someone who is experiencing a mental health crisis. The crisis team can determine that this mode is appropriate. The vehicle cannot be an ambulance or police car, but must have safety locks, a video recorder, a transparent thermoplastic partition and drivers/aides who have received specialized training. This is a more dignified way to transport people with mental illnesses in crisis.

### ***In Immediate danger***

If the situation is life-threatening or if serious property damage is occurring, **call 911** and ask for law enforcement assistance. When you call 911, tell them someone is experiencing a mental health crisis and explain the nature of the emergency and your relationship to the person in crisis. Tell the law enforcement agency that it is a crisis involving a person with a mental illness and ask that they send an officer trained to work with people with mental illnesses called CIT, Crisis Intervention Team Training. Be sure to tell them—if you know for certain—whether the person has access to guns, knives or other weapons.

When providing information about a person in a mental health crisis, always be very specific about the behaviors you are observing. Instead of saying “my sister is behaving strangely,” for example, you might say, “My sister hasn’t slept in three days, she hasn’t eaten anything substan-

tive in over five days, and she believes that someone is talking to her through her television.” Report any active psychotic behavior, significant changes in behaviors (such as not leaving the house, not taking showers), threats to other people and increases in manic behaviors or agitation, e.g., pacing, irritability). You need to describe what is going on right now, not what happened two weeks or a month ago. Be brief and to the point. Finally, in a crisis situation, remember: **when in doubt, back off or go out**. Do not put yourself in harm’s way.

## Law Enforcement Response

When the law enforcement officer arrives, provide them with as much relevant and concise information about the person as you can, including the person’s:

- ▶ Diagnosis
- ▶ Medications
- ▶ Hospitalization history
- ▶ Previous history of violence or criminal charges

If the person has no history of violent acts, be sure to point this out. Lay out the facts efficiently and objectively, and let the officer decide the course of action.

Remember that once 911 has been called and the officers arrive on the scene, **you do not control the situation**. Depending on the law enforcement officers involved, they may take the person to jail instead of to a hospital emergency room. Law enforcement officers have broad discretion in deciding whom to arrest, whom to hospitalize and whom to ignore. You can encourage and advocate for the law enforcement officers to view the situation as a mental health crisis. **Be clear about what you want to have happen without disrespecting the law enforcement officer’s authority**. But remember, once 911 is called and law enforcement officers arrive on the scene, they determine if a possible crime has occurred, and they have the power to arrest and take into custody a person that they suspect of committing a crime. If you disagree with the officers, don’t argue—later call a friend, mental health professional or advocate for support and information. (For more information about the criminal justice system and what to do in case of an arrest, see the NAMI Minnesota booklet entitled *Criminal Justice: Advocating for an Adult with a Mental Illness*).

Law enforcement can (and often does) call the county mental health crisis teams for assistance with mental health crises. The crisis team may assist police in deciding what options are available and appropriate.

Some cities and counties have CIT officers. CIT stands for Crisis Intervention Team Training. CIT officers are specially trained to recognize and work with individuals who have a mental illness. CIT officers have a better understanding that a person's behaviors are the result of a mental illness and how to de-escalate the situation. They recognize that people with mental illnesses sometimes need a specialized response, and they are familiar with the community-based mental health resources they can use in a crisis. You can always ask for a CIT officer when you call 911, although there is no guarantee one will be available.

Body cameras now are more commonly being worn by police officers. State law is not clear about the privacy rights of the individual being taped. You may ask if the officer is wearing a body camera and ask about confidentiality.

Police are required to have at least six hours of training on mental illnesses and de-escalation during their licensing renewal period. Not all officers will have the 40 hour CIT training. ■

## HOSPITALS AND EMERGENCY DEPARTMENTS

If the situation cannot be resolved on site or it is recommended by the crisis team or law enforcement officer, taking your loved one to the emergency department (ED) may be the best option.

It is important to know that bringing someone to the emergency department does not guarantee admission. Admission criteria vary and depend on medical necessity as determined by a doctor. Mental health crisis teams can assist with the triage process and refer your loved one to the hospital for assessment, which may make it easier for them to be admitted. A person does not need to meet emergency hold criteria to be admitted voluntarily.

When you arrive at the ED, **be prepared to wait several hours**. Bringing a book, music, electronic game or other distractions may help the person who is in crisis stay calm. Bring any relevant medical information, including the types and doses of any medications. Some hospitals have separate psychiatric emergency departments. They are typically quieter and are staffed by mental health professionals and practitioners. Check to see if there is one in your area. There is also an urgent mental health care center in St. Paul that can be a good alternative to an ED, although it is not open 24/7.

If your loved one is not admitted to the hospital and the situation changes when you return home, don't be afraid to call the crisis team

again. The crisis team will re-assess the situation and make recommendations or referrals based on the current situation. Your loved one may meet the criteria for hospital admission later. ■

## COMMITMENT

There are times when someone is in danger or hurting themselves or others and they will not seek or accept treatment voluntarily. This is where the Minnesota Civil Commitment Law comes into play. It's a balancing act between the person's rights to make their own decisions and the person's need for treatment.

A person cannot be committed for treatment against their will unless they pose a risk of harm due to a mental illness, and meet the legal standard.

A "person who poses a risk of harm due to a mental illness" means any person who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, that is manifested by instances of grossly disturbed behavior or faulty perceptions and who, due to this impairment, poses a substantial likelihood of physical harm to self or others as demonstrated by:

- ▶ a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment;
- ▶ an inability for reasons other than indigence to obtain necessary food, clothing, shelter, or medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided;
- ▶ a recent attempt or threat to physically harm self or others; or
- ▶ recent and volitional conduct involving significant damage to substantial property

*A person does not pose a risk of harm due to mental illness under this section if the person's impairment is solely due to:*

- ▶ epilepsy;
- ▶ developmental disability;
- ▶ brief periods of intoxication caused by alcohol, drugs, or other mind-altering substances; or
- ▶ dependence upon or addiction to any alcohol, drugs, or other mind-altering substances.

You should know that the commitment law is for people ages 18 and over. Minnesota laws are confusing about how commitment applies to teenagers ages 16 and 17. Some counties apply the commitment law to teenagers at these ages, providing all the due process requirements. Other counties may allow parents to consent to treatment, use the juvenile courts or even use the CHIPS petitions for 16 and 17 year olds who are refusing treatment. Because the practice varies so much, check with your teen's treatment facility and the county. ■

## STEPS IN THE COMMITMENT PROCESS

*There are eight major steps in the commitment process:*

1. Peace or Health Officer hold
2. Emergency or 72 hour holds
3. Pre-petition screening
4. The petition
5. The examination
6. The preliminary hearing
7. The commitment hearing
8. Determining the result

### STEP 1: PEACE OR HEALTH OFFICER HOLD

***“Fear of anger or retaliation often holds people back from committing a family member, but it shouldn’t. Proper treatment will help them understand it in the long run.”  
—FAMILY MEMBER***

It is not always possible to convince someone experiencing a mental health crisis go to a hospital for an assessment. In these situations, a police officer or health officer can place a hold on someone to involuntarily transport that person to a facility like a hospital emergency room. It is often referred to as a peace or health officer hold or a transport hold.

*A peace officer can be a sheriff, deputy sheriff, police officer, or State Patrol officer. A health officer can be a:*

- ▶ Licensed physician, psychiatrist, osteopathic physician certified in psychiatry
- ▶ Mental health professional (Psychologist, Clinical nurse specialist/nurse practitioner in psychiatry, Licensed Independent Clinical Social Worker, Licensed Marriage and Family Therapist, Licensed Professional Clinical Counselor)



- ▶ Licensed Social Worker
- ▶ A registered nurse working in an emergency room
- ▶ An Advance Practice Registered Nurse (APRN)
- ▶ A mental health practitioner providing mental health mobile crisis intervention services under the supervision of a mental health professional
- ▶ Formally designated member of a prepetition screening unit

To initiate the hold, a police officer or health officer must either through direct observation of the person's behavior or upon reliable information of the person's recent behavior (such as the family) that the person has a mental illness or developmental disability or is chemically dependent and intoxicated in public and is in danger of harming themselves or others if the officer does not immediately detain the person.

The health or peace officer fills out an application that lists the reasons why the person is being placed on a hold. If you want to know if the person is released, be sure to give them your name and contact information.

If the health officer and the peace officer disagree on the need for a transport hold, the written statement from the health officer or an examiner is sufficient authority for the police officer to transport the person. The officer may provide the transportation personally or arrange for the person to be transported by a suitable medical or mental health provider. If possible, the officer transporting the person should not be in uniform and must not use a vehicle visibly marked as a law enforcement vehicle.

When someone has been taken to the hospital under a transport hold, the person with a mental illness must be assessed for an emergency hold as soon as possible but within 12 hours of their arrival at the hospital. The transport hold ends when:

1. The person agrees to treatment voluntarily
2. An Emergency Hold is initiated
3. 12 hours after the person's arrival and they have still not been assessed by an examiner

*The commitment process can be initiated in either of two ways:*

1. By obtaining an emergency hold
2. By contacting the proper agency for a prepetition screening

Emergency holds are not required, but prepetition screenings are required. Each step is described separately. If no emergency hold is required, skip down to the next section.

## STEP 2: EMERGENCY OR 72 HOUR HOLD

### Emergency Holds

Sometimes when a person with a mental illness is no longer able to care for themselves or if they pose a threat to self or others, and will not agree to treatment, an emergency hold will be ordered to temporarily confine the person in a secure facility, such as a hospital. Emergency holds last for 72 hours each (not including weekends and holidays).

The purpose of the hold is to keep the person safe while awaiting a petition for commitment to be filed or while the pre-petition screening team reviews the matter. An emergency hold doesn't necessarily initiate the commitment process; it's simply a way to assess the individual to determine if commitment is necessary. In order to be committed the person must have recently: attempted or threatened to physically harm themselves or others, caused significant property damage, failed to obtain food, clothing, shelter or medical care as a result of illness, or be at risk of substantial harm or significant deterioration.

*An emergency hold can be initiated by an examiner. An examiner is one of these:*

- ▶ a physician
- ▶ a mental health professional
- ▶ an advanced practice registered nurse practicing in an emergency department
- ▶ a licensed physician assistant

To obtain an emergency hold, there must be a statement from the examiner that is no more than 15 days old that says the person has a mental illness and must be immediately detained to prevent injury to themselves or to others. In addition, the head of the treatment facility must give approval before the individual can be confined there. A person can only be held for 72 hours. Weekends and holidays do not count toward the 72 hours. To hold the patient for more than 72 hours, a petition for Civil Commitment and a petition for a court hold must be filed before the period ends. If the pre-petition screening is not completed before the hold order is up, the commitment can still be pursued.

Minnesota requires doctors and other examiners at the hospital to make an effort to obtain information from the person who brings a potential patient to any treatment facility.

*Be prepared to provide the following information about the person in crisis to the medical examiner:*

- ▶ Psychiatric history
- ▶ Past treatment including current list of medications and dosages

- ▶ Knowledge and direct observations of the recent behavior that caused concern. It can be helpful to write down your observations leading up to and during the crisis – be brief and concrete. You must provide detailed information on how the person is not able to take care of themselves, any suicide threats, threats to others, new behaviors, etc.
- ▶ Current mental health providers and insurance information about the person
- ▶ If there is an advance directive, guardian, health care agent

It is a good idea to compile this information before an emergency occurs. Write it down and keep it easily accessible so that you are not pressed to remember the information during a crisis.

Do not be surprised if the emergency room physician asks you to assess how dangerous the individual is to themselves or others and asks if you would be able to take the person home. **Be prepared to hold your ground if you really believe the individual needs to be hospitalized. Do not take someone home if you don't believe you can reasonably keep them and others safe.**

Sometimes hospitals and doctors do not share much information with the family, especially if the person is admitted to the hospital. There are two things to remember. One, Minnesota law allows basic information to be shared with someone providing care or directly involved with an individual with a mental illness. You must request the information in writing and have your involvement verified. Two, if your loved one refuses to agree to release even basic information you can still provide information to the hospital or doctor that may help them assess the situation and provide better treatment. You can also ask broad questions such as “if I had a relative with schizophrenia, what medications would be recommended if X medication wasn't working?”

## **What are the Rights of the Person with a Mental Illness under an Emergency Hold?**

The person with a mental illness has specific rights under an emergency hold.

*The person must be told of their rights to:*

1. leave after 72 hours
2. a medical examination within 48 hours of confinement
3. accept treatment voluntarily

The person with a mental illness also has the right to ask the court to release them before the 72 hours is over. If they ask to be released, the court will hold a hearing as soon as possible to determine if the emer-

gency hold is actually necessary. If the court decides to release them, it must attempt to notify everyone who was named in the emergency hold application including the health or peace officer, examiner, or people who may be in danger if the person is released. The patient also has the right to receive a copy of the written statement that authorized the emergency hold.

### **STEP 3: PRE-PETITION SCREENING**

Prior to going to court, the person is screened by the pre-petition team in the county of financial responsibility or where they live or are being held. The pre-petition screening team will assess whether the person with a mental illness meets the requirements for Civil Commitment.

Since the individual with a mental illness is often upset at the person who starts the civil commitment process, try to have a professional, such as the doctor or hospital administrator, initiate the process. It is better for the family to align with their loved one against the illness rather than appearing to align themselves against their loved one and thus be labeled the “enemy.” This does not mean that you should oppose a commitment.

The screening team gathers information about the person’s condition in a process called the prepetition screening investigation. The screening team can talk to family members, hospital staff, insurers, psychiatrists and others who might have information about the person’s health and behavior. If you do not hear from the screening team, you can contact them in order to tell them what you know.

***“Be slow and methodical in what you say. Be accurate and honest. It helps to bring in what you want to say in writing.”***

**—FAMILY MEMBER**

*As part of the investigation, the screening team must:*

- ▶ Interview the person with a mental illness and others who have knowledge of the person
- ▶ Identify and investigate the alleged behavior that justifies commitment
- ▶ Identify and explore alternatives to commitment and explain why these alternatives may or may not be appropriate
- ▶ Gather other information about the person with a mental illness, such as their medications, their ability to consent to treatment, the effectiveness of past treatment, and their wishes about treatment if they have an advance health care directive

- ▶ Contact the person's insurance company to talk about paying for treatment and finding doctors and treatment facilities on the plan
- ▶ Provide notice about rights, the commitment process, and the legal effects of commitment to the person to be committed

The screening team representative must say who they are and why they are talking to you. Write down their name and other information. Anything you tell the screener may be shared with others involved in the proceedings, including the person with a mental illness, the attorneys, the court-appointed doctor and county case managers. Your statements may also be used in the prepetition screening report and in court.

The screening team will share what they have learned once they have completed their investigation. The team determines whether they think the person with a mental illness should or should not be committed. The law says that the individual must receive the least restrictive treatment alternative.

If the screening team recommends commitment, the team sends a written report to the county attorney. If the screening team does not recommend commitment, the person who requested the screening may appeal the decision. If the decision is appealed, the team prepares a report for the county attorney to review. The county attorney then decides whether to file a petition.

The petition for commitment usually needs to be supported by the report of an examiner. The examiner must provide a written statement describing the person's diagnosis and behavior and stating that the person needs to be committed. This is called the *examiner's support statement* and becomes part of the prepetition screening report provided to the county attorney. This is separate from the examination and report prepared by the court-appointed examiner during the court proceedings. If someone is named in the examiner's statement, they must be notified when a decision is made on filing for civil commitment.

## What is the Family's Role during the Prepetition Process?

While families have varied experiences with the process, they seem to agree with what one family member said:

***"Be assertive. You might expect the process to take over once you get medical or hospital staff involved, but it will not. You have to be involved and pushing at every step. Commitment is not a terrible thing to do to your loved one. You are trying to protect them and keep them safe."***  
**—FAMILY MEMBER**

During the prepetition process, the screening team will ask you basic questions about the person with a mental illness and why they pose a danger to self or others. The team will also want to know about other people they could contact about the behavior or symptoms, such as family members (spouse, parents, brothers, sisters and children), and other people who have witnessed their behavior or symptoms. Have names and phone numbers for these people available.

The screening team needs specific examples of problem behaviors or symptoms to support a petition for commitment. Be prepared to tell them as many facts as possible. If you can, write down a detailed log about the person's behavior and life: When did the problem behavior occur? Who else was there? What happened? How many times has this happened in the past?

Having this information written down will make it easier for you to remember events later on, especially if you testify in court during commitment proceedings. Without notes, it might be hard for you to remember details about who was there, what everyone said and what happened. You need to be able to state why a commitment is necessary. Tell the team about alternatives that have been tried and why the person needs treatment.

*Here are some examples of questions the screening team may ask you about the person with a mental illness:*

- ▶ **BACKGROUND INFORMATION.** Name, age, current location/address, social security number, names of family members
- ▶ **EMPLOYMENT HISTORY.** Currently employed? When did they last work? How has their illness affected their ability to work?
- ▶ **FINANCIAL INFORMATION.** Do they pay rent and other bills? Do they have insurance?
- ▶ **SELF-CARE.** Do they shower, change clothes, wash clothes?
- ▶ **DIET.** Is the person eating? Have they lost or gained weight? If so, how much and over how much time?
- ▶ **OVERALL HEALTH.** Do they have health problems in addition to their mental illness? What are they?
- ▶ **HOUSING.** Where are they living? How long have they lived there? Is it a stable living environment?
- ▶ **DRUG USE.** Do they use drugs? Have they admitted to drug use? Which drug(s) do they use? How much and where do they get it? How do they pay for it? Have you seen the person high or intoxicated? If so, when?
- ▶ **WEAPONS.** Do they have access to a weapon?
- ▶ **TREATMENT HISTORY.** Where did they receive treatment in the past (list facilities and treatments with year and month of treatment)?

- ▶ **POLICE RECORD, COURT INVOLVEMENT, ACCIDENTS.** Have they been ever been arrested, spent time in jail or prison? List dates and charges
- ▶ **BEHAVIOR.** Have they made verbal or physical threats? Are they verbally or physically abusive? Have they mentioned suicidal thoughts or plans? Have they attempted suicide? Have they acted irrationally?
- ▶ **DIAGNOSIS/SYMPTOMS.** What is their diagnosis? Why do you believe they have a mental illness? What signs and symptoms do you see?
- ▶ **MEDICAL CARE PROVIDERS.** Do they have a therapist, psychiatrist or other doctors? Who are they and how can they be reached?
- ▶ **MENTAL HEALTH TREATMENT.** Have they been hospitalized or received outpatient care? If so, when (year and month) and where?
- ▶ **MEDICATION.** What medications have been prescribed? Do they take the medication as prescribed? What medications were they on in the past?

Don't worry if you cannot answer all of these questions. It would be difficult to provide information in all of these categories.

***“The prepetition screener is the focal point in the process. It is very important to work with that person closely and find out as much as you can from her.”***  
**—FAMILY MEMBER**

## STEP 4: THE PETITION

After the prepetition screening team reviews the situation, a *Petition for Civil Commitment* must be filed to start the actual civil commitment process. The person who files this petition is the *petitioner*. The person who is the subject of the petition is the *respondent*.

According to the law, anyone who is familiar with the person's behavior can be a petitioner. The petitioner does not have to witness the person with a mental illness's behavior firsthand, but must have facts to support what is said about the person. For example, a petitioner cannot simply say that the person with a mental illness seems to be unable to take care of himself or seems to be dangerous. The petition must state actual events that show the person with a mental illness meets the criteria listed on page 11.

The petitioner is often the head of a treatment facility where the person with a mental illness is being treated, but the petitioner can also be a family member, friend or someone in the community. However, we rec-

commend that family members not be the petitioner. The petitioner does not always have to fill out and file the petition on his own. The person who prepares the actual petition may vary from county to county. In some counties, for example, people who believe an individual with a mental illness should be committed can visit the county attorney's office and an attorney will help prepare the petition. In other counties, the prepetition screening team will prepare the petition if they support the petition.

Remember, the prepetition screening team can only prepare the petition using information given to them during the investigation; they cannot start their own petition. Treatment facilities may be responsible for preparing their own petitions. In hospitals, the social worker is usually the person who represents the hospital at the commitment hearing.

The petition contains several items. One is the prepetition screening team's report. Another is an examiner's statement which includes the diagnosis of the person, facts to support the diagnosis, a recommendation for civil commitment, information to support civil commitment, and the date of the examination.

If the petitioner cannot get the examiner's report, they can include documents that show why they could not get the report. For example, documents that show the person with a mental illness refused to cooperate with the examination.

If the pre-petition screen team decides not to file a petition for commitment, you can go directly to the county attorney and ask them to do it—but they then make the decision.

## **STEP 5: THE EXAMINATION**

After a petition is filed, a licensed psychologist or psychiatrist, called a *court appointed examiner* must perform another examination. The examiner provides the court with an independent assessment of the need for commitment. This examination is required by law.

The person with a mental illness will be given a *summons* to attend this examination. A summons is a written notice given to the person with a mental illness and says they must show up to be examined. If the person with a mental illness does not show up, or the person is on a hold, the court can have a peace officer find the person and bring them in to be examined.

A person with a mental illness must be examined by the court's examiner first, but they can also choose any examiner they want to perform a second separate examination from a list of approved examiners. Only



the county attorney and the lawyer of the person with a mental illness can attend these examinations. Family members are usually not allowed to attend.

## **STEP 6: THE PRELIMINARY HEARING**

The preliminary hearing is a legal meeting with the judge and lawyers to discuss several matters before the trial. If there is an agreement worked out, the judge will look at it. If the person with a mental illness is confined by an emergency hold, the judge will decide if they should remain confined or hospitalized until the end of the trial. If there is no settlement, the two sides will pick a time to have the trial. Families should attend the preliminary hearing even if they are told that it is not necessary, because sometimes a resolution is achieved at the preliminary hearing. The person with a mental illness will be appointed a lawyer.

## **STEP 7: THE COMMITMENT HEARING**

***“It is difficult to see someone that you love act psychotic in front of other people. It fosters a desire to protect, even though you know that the commitment is for the best.”***

**—FAMILY MEMBER**

A commitment hearing is a civil trial before a judge. The commitment hearing is usually held in a courtroom setting and follows formal court procedures. It must be held within 14 days of the filing of the petition, but the hearing may be extended an additional 30 days. Some counties allow the hearing to be held at a hospital or via a teleconference. The person, if on a hold, is usually brought to the hearing by the sheriff's office.

The burden of proof is on the county attorney, who must prove that the person has a mental illness and meets all the requirements for commitment. The lawyer representing the person with a mental illness only has to show the judge that there is not enough evidence to commit the person. The judge will listen to both lawyers, look at all the evidence and make a decision.

You may be asked by the county attorney to testify at the trial. The judge needs to hear evidence of behaviors showing mental illness, behaviors that demonstrate an inability to care for self, or dangerous to

self or others. The attorneys understand that you are being asked to talk about a family member or friend's behavior in front of the person, and that this can be very stressful.

Generally, you can only testify about things that you have seen or heard directly, not what you learned through talking to other people. Be sure and dress appropriately for court, respond directly to the questions asked and follow the directions of the judge. The county attorney will usually talk with you before the hearing.

## **Who Can Attend Court Proceedings?**

Except for the examination, court hearings are public proceedings and anyone may attend. The court can exclude people who are not necessary to the proceeding. Generally, only those who receive notice of the hearing or are contacted by the attorneys will attend. You can contact the clerk of the court or the county attorney to determine when and where the hearing will be held. It is a good idea to attend the hearings.

## **Can You See or Talk to the Person with a Mental Illness during the Court Proceedings?**

If the person with a mental illness is on a hold, the police or sheriff will bring them to the hearing. The courtroom deputy is in charge of supervising and monitoring them. Typically, you will not be able to visit with them during the hearing. Families are free to sit with the family member before and after the hearing. It is important to be supportive throughout the entire process. Talking with the person with a mental illness before and after the hearing is a simple gesture the person will probably appreciate. It is also valuable for preserving the relationship. If the person with a mental illness is being held in a facility during this process, contact the treatment facility where they are being held to arrange a visit.

## **What are the Rights of the Person with a Mental Illness?**

After the petition is filed, the court appoints a lawyer to represent the person with a mental illness at no cost to the person or their family. These lawyers have been given additional training on mental health issues. Otherwise, the person with a mental illness may hire any lawyer they want but may have difficulty finding a lawyer to represent them.

Remember, the county attorney's office also represents the petitioner and tries to have the person with a mental illness committed. The defense lawyer only represents the wishes of the person with a mental

illness. If the person with a mental illness does not want to be committed, the defense lawyer must use the evidence to argue that they should return to the community.

The court-assigned defense attorneys for the person with a mental illness specialize in these types of cases, and will do just as good a job as a hired lawyer or attorney. The court-assigned attorneys are also free.

***“The attorney must represent the wishes of the person who is being committed. This may seem very frustrating since your loved one’s wishes may not coincide with their best interests.”***

**—FAMILY MEMBER**

***“Even though it is a civil court, it can feel like you are in a criminal arena. The judge even lectured my son ‘not to do that again.’”***

**—PARENT**

## **STEP 8: DETERMINING THE RESULT**

If the judge decides that there is enough evidence, the person with a mental illness will be committed. If the judge decides that there is not enough evidence, the individual with a mental illness is free to return to the community.

A person is typically committed to a community hospital or some other community treatment program. Sometimes, people are committed to a state run hospital or program. Examples include: Community behavioral health hospital (CBHH), Community Addiction Recovery Enterprise (CARE), or Anoka Metro Regional Treatment Center (AMRTC). ■

***“Had we known the system was in place to find help, we would have gotten our son into the hospital sooner.”***

**—PARENT**

## QUESTIONS ABOUT COMMITMENT

You may have questions and concerns about the commitment process. Here are some typical concerns and answers to guide you.

### How Long does the Initial Commitment Last?

It cannot last more than six months without a report being filed and a hearing held. The court's social worker submits a report to court at least once every 90 days. The order no longer goes away if they forget to submit the report, the court reaches out to remind them to submit the report.

However, since people rarely stay in the hospital that long, commitment includes both inpatient and outpatient care, under a *provisional discharge*.

Each committed person receives a county case manager who provides services and monitors them. The case manager, treatment facility or treating physician can discharge them whenever they believe the patient is ready. Under a provisional discharge, if the person with a mental illness does not follow the conditions for their discharge (such as taking medications, visiting with the case manager, etc.) the provisional discharge can be revoked and the person returned to a treatment facility.

### What Happens If People Need Treatment Beyond Six Months?

It is called *continuing commitment*. Occasionally people are not ready to be released after six months. If the case manager believes that the person continues to be at risk after being under commitment for six months, or believes that the person will likely stop treatment as soon as the commitment expires, they can recommend an extension of the commitment.

In a hearing for continued commitment, the person would have the same rights as they did in the first proceeding. This proceeding can extend the commitment up to an additional twelve months. However, the case manager can release the person with a mental illness at any time during this extended period if they feel that the person is ready. At the end of this up to 12-month period, the person can be "recommitted" annually for periods up to 12 months, but each recommitment requires a new petition for commitment supported by a new examiner's statement.

If you feel that an ongoing commitment is needed, be sure to let the

case manager know at least one month before it expires. Commitments can be continued for up to twelve months after that through a “recommitment,” but the petition must be filed well before the existing court jurisdiction expires.

## **When is Commitment Reviewed?**

Once committed, the person with a mental illness has the right to request that the court discharge them from commitment if they believe mandated treatment is no longer necessary. The person with a mental illness can contact the court about this at any time. The attorney will help file the petition to review.

## **Who Pays for Treatment?**

Just because you act as the petitioner does not mean you have to pay for a patient’s treatment. Treatment costs may be paid by the county, private insurance, government programs or the patient.

Although you should talk to the hospital staff or the county case manager about your specific situation to determine the cost and payment of care, here are a few general guidelines to keep in mind.

Generally, who pays depends on where the care is given and the insurance of the individual with a mental illness. If Minnesota Care or a private insurer covers the patient, the insurer is billed. Medical Assistance covers inpatient care, but not care at Anoka Regional Treatment Center or the MN Security Hospital. If the patient is between the ages of 18 and 65 and has no insurance, the patient is ultimately responsible for the cost of treatment, but with Medicaid expansion, most adults with a low income will be eligible for Medicaid.

## **How is Discharged Determined?**

An individual’s discharge plan is started upon admission as the individual and staff develop a treatment plan. During this process, the supports and treatment required to ensure the individual can live successfully in the community are assessed. The treatment plan is reviewed at least quarterly to monitor/assess progress and move to discharge. If the individual agrees, programs and hospitals find participation by families in treatment planning to be very helpful. ■

## **ALTERNATIVES TO COMMITMENT**

The judge might find, or the parties might agree, that the person with a mental illness would be best served by a treatment option less restrictive than commitment on an inpatient unit. In addition to continuances and commitment stays, there may be other alternatives. Some of these alternatives are discussed below.

### **Community-based Treatment**

Often a person is committed to a community-based program (typically a residential program, sometimes a day treatment program) instead of involuntary commitment to a state operated program or hospital. In other states this is called Assisted Outpatient Treatment (AOT). In this case, a written plan of services must be developed with conditions that must be complied with and consequences for non-compliance.

If you want the person with a mental illness to receive community-based treatment, the agency should be involved in the settlement agreement negotiations. Find out whether there are openings available in the program before you suggest this alternative.

### **Continuance for Dismissal**

Sometimes the parties decide that the commitment hearing should be delayed so that the person with a mental illness can voluntarily participate in a treatment plan under specific conditions. The court may continue a case for dismissal for up to 90 days, after which the petition is dismissed if the person is participating in treatment and does not pose a danger to the community.

### **Stay of Commitment**

A stay of commitment means that the court will not enforce the commitment as long as the person participates voluntarily in a treatment plan. If they do not follow the rules of this treatment plan (for example, staying clean if there is a drug problem, taking medication or attending groups), then the court ordered commitment begins.

The court can stay a commitment order for up to six months and renew it for an additional 12 months if necessary. In this case, a written plan of services must be developed with conditions that must be complied with and consequences for non-compliance. Do not be disappointed by this result. In a way, a stay of commitment extends the timeline for care.

## Engagement Services

### *Services for Engagement in Voluntary Treatment*

It is always better for someone to voluntarily engage in their mental health treatment. However, this is not always easy and may take focused and assertive efforts to convince someone to agree to their treatment. In other cases, someone may be experiencing the symptoms of a serious mental illness for the first time and will need extra support and engagement to begin treatment for their mental illness.

Services for voluntary engagement in treatment is a new option for counties to engage people who are at risk of civil commitment. In order to be eligible for this service, the person must have a mental illness, be at least 18 years old and either:

1. Exhibit the signs of a serious mental illness such as hallucinations, mania, or delusional thoughts or be unable to obtain necessary food, clothing, shelter, medical care, or provide necessary hygiene due to a mental illness;
- or
2. Have a history of failing to adhere with treatment for their mental illness that has been a key factor in the past for a hospitalization or incarceration, and the person is now showing the symptoms that may lead to hospitalization, incarceration, or court-ordered treatment.

If a friend, loved one, or client looks like they meet these criteria, then you should contact your county pre-petition screening team about engagement services. This program is optional and not all counties are currently offering services for engagement in treatment, so this may not be available in your community.

If the county is offering services for engagement in treatment, it will be up to the pre-petition screening team to determine whether or not someone is a good fit for this program. Engagement services can continue for up to 90 days to encourage them to voluntarily seek treatment for their mental illness. Engagement services staff can include mobile crisis teams, certified peer specialists, community providers, and homeless outreach workers. Engagement services can be delivered if the person is in jail. In addition to helping the person seek mental health services, the engagement team can also provide support in the following areas:

- ▶ Engage the person's support network of family and friends, including education on means restriction and suicide prevention
- ▶ Collaborate with the person to meet immediate needs including access to housing, food, income, disability verification, medications, and treatment for other medical conditions

If the person agrees to voluntary mental health treatment, engagement services staff must facilitate a referral to an appropriate mental health provider and help the person obtain health insurance if this is necessary. At any point, the county can begin the civil commitment process if needed.

## Advance Health Care Directives

Advance Health Care Directives (AHCD) are important for all individuals over 18 years of age, a time when they cannot make decisions for themselves, especially in the case of severe mental illnesses. An AHCD allows individuals to appoint someone as power of attorney to make care and treatment decisions on their behalf, and give written instructions for the care they wish when they become ill. ■

## DANGEROUS TO THE PUBLIC

The process is very similar for people with a mental illness being committed because they are dangerous to the public.

*A “person who has mental illness and is dangerous to the public” is a person who:*

1. has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, that is manifested by instances of grossly disturbed behavior or faulty perceptions
2. who as a result of that mental illness presents a clear danger to the safety of others as demonstrated by the facts that (i) the person has engaged in an overt act causing or attempting to cause serious physical harm to another and (ii) there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another

In these cases, an initial hearing is held to determine whether the person meets the required criteria for commitment and then a report is due to the court 60 days later, with a hearing held within 90 days to decide if the person still meets the criteria as a person who is mentally ill and dangerous. Unlike other commitments that last for 6 months and then one year, these are indeterminate commitments with no time limits.

A person is typically committed to the Forensic Mental Health Program (also known as the Minnesota Security Hospital or St. Peter) unless the person can show that there is a less restrictive treatment program available that will meet their needs and the safety of the public.



Reviews are conducted every three years or upon request by the treatment team or individual, by the Special Review Board, an administrative panel of hearing officers operating under the authority of the Minnesota Department of Human Services. There is also an appeal panel, called the Supreme Court Appeal Panel (SCAP). The Special Review Board will look at the person's clinical progress and present treatment needs; the need for a secure setting to accomplish continuing treatment; what level of services able to meet the person's needs; and whether the transfer can be accomplished with a reasonable degree of safety for the public.

The average length of stay at FMHP is 5 to 8 years. FMHP has a system to move people through lesser levels of security starting at level 1 and working towards level 5. This level is determined by their legal status, progress in treatment, assessed level of risk of harm to self or others, psychiatric stability and potential for elopement.

Families should know that visiting a loved one at FMHP is very different than at other hospitals. The visiting hours may be limited and usually only for one hour. When you arrive for a visit, you will be asked to provide an unexpired official photo ID, complete a visitor registration form, lock up all personal items (cell phones, keys, purses, coats), pass through a metal detector, and may be searched for contraband (cigarettes, weapons, etc.). There are strict rules about what you can bring your loved one so be sure to check with the unit before the visit.

Before provisionally discharging, discharging, granting pass-eligible status, approving a pass plan, or otherwise permanently or temporarily releasing a person committed as having a mental illness and being dangerous from a treatment facility, there have to be reasonable efforts to notify any person who has been granted victim status and that person has a right to submit a written statement regarding decisions that may be made by the treatment facility of the review board.

## Rule 20 Evaluation

You will hear people talk about **Rule 20 Proceedings**. This phrase can refer to either Rule 20.01, which concerns the defendant's competency to proceed in a criminal case, or Rule 20.02, which concerns whether or not the defendant was criminally responsible for the offense they are accused of. These rules are contained in the Minnesota Rules of Criminal Procedure. The presence of a mental illness is relevant to both types of proceedings.

If your loved one has been assigned a public defender or has retained an attorney in a criminal matter, let the attorney know your concerns about your loved one's mental health.

## Rule 20.01: Competent to Stand Trial

A defendant must be competent to proceed with the criminal case when charges have been brought against them. *Competent* means that the defendant is able to consult with the defense attorney, understand the proceedings and participate in their defense. If either the prosecuting or the defense attorney doubts that the defendant is able to proceed because the defendant has a serious mental illness, the attorney must bring this concern to the court's attention. The court will then order that a competency examination be conducted and appoint a psychiatrist or psychologist to conduct the examination. Once the decision is made to have the defendant examined, criminal proceedings are paused.

### *The examination may be conducted:*

- ▶ on an out-of-custody basis
- ▶ in the jail
- ▶ in a hospital (such as Anoka Regional Treatment Center) when clinically indicated
- ▶ Both the prosecuting and defense attorneys are allowed to hire their own examiner and have that examiner present at the examination conducted by the court's examiner.

### *Contents of the examination report:*

- ▶ A diagnosis of the defendant's mental condition
- ▶ An opinion about the defendant's ability to understand the criminal proceedings and to participate in their own defense
- ▶ Recommendations for treatment
- ▶ An estimation of the likelihood that the defendant will eventually become competent
- ▶ The factual basis for these opinions

The report is given to the judge, prosecutor and defense attorney. The judge determines whether the defendant is competent based on the report and any objections from the attorneys. If the judge finds the defendant competent, then the defendant must go back to court and criminal proceedings continue. If the judge finds the defendant incompetent in a misdemeanor case, then the court must dismiss the criminal case and may start civil commitment proceedings. If the defendant is found incompetent in a gross misdemeanor or felony case, then the criminal charges are paused.

If the defendant is already civilly committed—which is when the court has ordered a person into treatment for a mental illness—the commitment will continue. Otherwise, the court will begin civil commitment proceedings against the defendant. If the defendant is civilly committed, the forensic examiner will update their opinion about the defendant's

mental condition and provide an opinion on the defendant's ability to return to court. These reports are typically done at least once every six months. At any time, the court can conduct a hearing on the defendant's competency. There is no limit on the number of these hearings. A defendant cannot enter a plea or be tried or sentenced for any offense as long as they are judged to be incompetent. If the charges against the defendant do not include murder, they will be dismissed three years after the date the defendant was found incompetent, unless the prosecuting attorney files a notice of intent to prosecute at any time within this period. If this notice is filed, the criminal proceedings against the defendant will continue once the defendant is found competent, even if it takes more than three years. It commonly happens that when a defendant who is initially found to be incompetent to stand trial receives medication and treatment, the defendant becomes competent and then stands trial.

## **Rule 20.02: Mental Illness Defense**

Minnesota law sets the standard that the criminal courts use to determine if a defendant with a mental illness should be held criminally responsible for an offense. In Minnesota, the mental illness defense, or what is commonly called the *insanity defense*, is referred to as the M'Naghten test, named for the defendant who was tried for murder in England, in 1843 and judged too "mentally ill" to be found guilty of the offense. The standard is that the defendant's mental illness was so serious at the time of the offense that the defendant did not know the nature of the act or that it was wrong. It is important to note that this is a very high standard and not used successfully very often by defendants.

Many defense attorneys are reluctant to use this defense, in part due to the high threshold necessary to be found not responsible but also because a successful defense immediately triggers (except in very rare cases where the court is willing to waive it) a civil commitment proceeding. If civilly committed, the defendant may be held in a secure treatment facility for a longer period of time than the prison sentence would have been if the defendant had been found guilty. ■

## **JARVIS ORDERS**

If the person with a mental illness does not want to take medication, the court can order them to take medication under certain situations. This is commonly referred to as a "Jarvis Order." This is only for neuroleptic medications such as Abilify, Clozaril, Risperdal, Seroquel, Latuda and Vraylar.

The court doesn't need to become involved if the person will take these medications voluntarily, if they have the capacity to consent, if they had been prescribed the medication prior to admission, it's an emergency situation or a substitute decision maker consents to the medication. Please note that just because you are a guardian of the person doesn't mean you can consent to the person taking a neuroleptic. The substitute decision making in these situations is someone appointed by the court who is designated by the local mental health authority. The court is supposed to use an already appointed guardian in most situations but remember this requires an additional step.

The court makes the decision based on the person's values, medical risks and benefits, past experience with taking these medications and other issues that may come up. If a Jarvis petition is initiated, the person will have an attorney appointed to them.

## COMMON TERMS

**County Attorney.** The county attorney represents the petitioner. The commitment laws anticipate that the county attorney will handle all of these cases. Be sure to contact the office in advance of the hearing to let them know of your concerns, whether you plan to attend the hearings, and whether or not you are the petitioner. The county attorney can discuss the case and alternatives with you, but cannot share any medical records without a release from the person.

**Court Examiner.** A court examiner means a physician or licensed psychologist who has a doctoral degree who is appointed by the court to conduct an assessment of the person that is submitted to the court for the commitment hearing.

**Defense Attorney.** The defense attorney represents the person with a mental illness. The person with a mental illness can either hire an attorney or wait for the court to appoint one. A court-appointed attorney is free, has a lot of experience in the area of civil commitment, and will do the same job as a hired lawyer. Each county differs in how it appoints defense attorneys, but each attorney knows about and practices in the area of civil commitment. Understand that the defense attorney must represent the wishes of his or her client even if it is not in that person's best interest.

**Examiner.** An examiner is a licensed physician, a mental health professional, a licensed physician assistant, or an advanced practice nurse who is practicing in an emergency room.

**Health Officer.** A health officer is a Licensed physician, psychiatrist, osteopathic physician certified in psychiatry, a mental health professional (Psychologist, Clinical nurse specialist/nurse practitioner in psychiatry, LICSW, LMFT, LPCC), a Licensed Social Worker, a registered nurse working in an emergency room, an Advance Practice Registered Nurse (APRN), a mental health practitioner providing mental health mobile crisis intervention services under the supervision of a mental health professional, or a formally designated member of a prepetition screening unit. A health officer has the authority to initiate a transport hold.

**Mental Health Professional** means a person providing clinical services in the treatment of mental illness who is a psychiatric nurse, clinical nurse specialist or as a nurse practitioner in mental health, licensed independent clinical social worker, certain master's level social workers, psychologists, psychiatrist, marriage and family therapist, or licensed professional clinical counselor.

**Peace Officer.** A peace officer is a sheriff, police officer or state patrol officer.

**Petitioner.** The person who files the petition with the court is called the *petitioner*. Any interested person may file a petition for commitment. The petition tells the court the reasons the person with a mental illness should be committed. The family should do everything possible to make sure that the petitioner is a professional such as a doctor, because the person with a mental illness is often angry at whoever initiates the process. Petitions are often filed by hospitals or treatment facilities, but family members and people in the community may file them too.

**Prepetition Screening Team (PST).** Your county should have a person or group of people that investigate requests to file a petition for commitment. These are the people you contact to start the civil commitment process. They write the prepetition screening report.

**Price Hearing.** A Price Hearing is similar to a Jarvis hearing but instead of requesting to administer medications, it is to authorize electroconvulsive therapy (ECT).

**Respondent.** The person who is being committed is called the *respondent*. ■

## **APPENDIX: COUNTY INFORMATION**

### **Hennepin County**

Hennepin County Attorney's Office Adult Services Section and the Probate-Mental Health Division of Hennepin County District Court handle Civil Commitment cases in Hennepin County. The Hennepin County Prepetition Screening Program can be reached at 612-348-2787 and the Adult Services Section of the Hennepin County Attorney can be reached at 612-348-6740 (fax is 612-348-6430).

Hennepin County asks the petitioner to review a copy of the prepetition screening report and to note any incorrect information. If something is wrong, the report cannot be corrected, but the corrected information can still be given to everyone involved. If an individual is acting as the petitioner, that individual will be asked to sign the petition.

Each respondent is assigned a case manager through the Hennepin County Children, Family and Adult Services Department. Case management services are available at the respondent's request after court jurisdiction ends, and can be arranged through Hennepin County Children, Family and Adult Services Department. If you have concerns at any time, tell the case manager. If the court orders treatment, either through a commitment or under a court-supervised voluntary arrangement, let the case manager know well before the court order expires (at least a month, if possible) if you feel the court supervision should be extended.

### **Ramsey County**

The Civil Commitments Unit in Ramsey County investigates all requests for a petition for commitment. The number is 651-266-3222.

If the team recommends commitment, they draft a report summarizing their investigation and submits this to the Civil Commitment Unit of the Ramsey County Attorney's Office. An Assistant County Attorney reviews the petition, the attachments, and the prepetition screening report to ensure that all of the requirements for a valid commitment are met and that there is sufficient evidence to prove the underlying behaviors and that commitment is the least restrictive alternative. If the team rejects the petition, the request is returned to the petitioner, who may appeal directly to the Ramsey County Attorney's Office.

### **Anoka County**

To begin a Civil Commitment proceeding, contact Anoka County Adult Services at 763-324-1420.

Anoka County does not require an examiner's statement supporting commitment, but Adult Services recommends it as part of the prepeti-

tion screening process. By law, the county has to explain why there is no examiner's statement.

In Anoka, the county attorney fills out the petitions, but someone from the Adult Services Office signs the petition. The Social Services Division acts as the petitioner rather than the family or hospital.

When someone calls to initiate the commitment process, Anoka asks for facts supporting the claim. Anoka County suggests that the family contact the facility when the person to be committed is already in a treatment facility. The prepetition intake worker works with the family and the treatment facility's social worker to figure out payment issues.

In Anoka, the screeners attend court hearings for the cases they are handling. Anoka does not use court liaisons.

### **Carver County**

Contact Carver County Adult Services (part of Community Social Services) at 952-361-1600.

### **Chisago County**

Contact Chisago County Human Services Division at 651-213-5612.

### **Crow Wing County**

Contact a county mental health intake worker directly at 218-824-1140.

### **Dakota County**

Contact Dakota County Probate/Mental Health Court Social Services Department at 651-554-6000.

### **Goodhue County**

Contact Welfare/Social Service office at 651-385-3232.

### **Isanti County**

Contact the Family Services Department at 763-689-1711. If the PST does not recommend commitment, the Social Services Department informs the family or the hospital that they have the right to contact the county attorney's office to file for commitment on their own.

### **Nobles County**

Contact the Social Services Unit of the Nobles County Family Services Agency at 507-295-5213.

### **Olmsted County**

Family members should begin by calling Community Services at 507-328-6400. If you call the Olmsted County Attorney's Office prior to prepetition screening, you will be referred to Social Services.

### **St. Louis County**

St. Louis County Social Services Division can be reached at 218-726-2000 or 800-450-9777.

### **Stearns County (St. Cloud)**

Contact the Stearns County Service Entry Unit at 320-656-6000 or 1-800-450-3663. This unit is part of the Adult Mental Health Unit of the Stearns County Human Services Department.

The workers at the Service Entry Unit will speak with you regarding your concerns and set up a time to meet with you. A coverage person from the Service Entry Unit will meet with you and your family. During this interview, the coverage person will discuss two options for the person with a mental illness: conducting a vulnerable adult report or involuntary commitment. If you wish to proceed with involuntary commitment and you wish to be the petitioner, the coverage person will initiate the prepetition screening process.

If you are dissatisfied with the results of the prepetition screening process, you may still appeal the findings of the prepetition screening investigative team to the county attorney.

### **Washington County**

Contact Washington County Adult Mental Health Services at 651-430-6484.

### **Winona County**

Contact Winona County Human Services at 507-457-6200.

### **Wright County**

Contact 763-682-7481 to initiate the process.



## RESOURCES

### **NAMI Minnesota**

1919 University Ave. W., Suite 400  
St. Paul, MN 55104  
651-645-2948 1-888-NAMI-HELPS  
[www.namimn.org](http://www.namimn.org)

### **Minnesota Disability Law Center**

The Minnesota Disability Law Center works to promote, expand and protect the human and legal rights of persons with disabilities through direct legal representation, advocacy and education.  
612-334-5970 1-800-292-4150  
[www.mndlc.org](http://www.mndlc.org)

### **Office of the Ombudsman for Mental Health and Development Disabilities**

The Ombudsman for Mental Health and Mental Retardation assists with the following: concerns or complaints about services, questions about rights, grievances, access to appropriate services, general questions or the need for information concerning services for persons with disabilities.  
651-757-1800 1-800-657-3506  
[www.mn.gov/omhdd](http://www.mn.gov/omhdd)

March 2021

## NOTES

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National Alliance on Mental Illness

**MINNESOTA**

1919 University Ave. W., Suite 400  
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Phone: 651-645-2948

Toll Free: 1-888-626-4435

Fax: 651-645-7379

E-mail: [namihelps@namimn.org](mailto:namihelps@namimn.org)

Web: [www.namimn.org](http://www.namimn.org)

