

INVOLUNTARY COMMITMENT – MENTAL DISORDERS

Who may be involuntarily committed for mental disorders?

Generally, persons suffering from a mental disorder may not be involuntarily committed.¹ The exceptions to this general rule are:

- Minors, age 13 or older, who as a result of a mental disorder are gravely disabled or who present a likelihood of serious harm to themselves or others.²
- Minors under age 13 admitted on the application of the minor's parent.³
- Persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or dementia, if they are either gravely disabled or present a likelihood of serious harm to themselves or others.⁴
- Persons voluntarily admitted who request release, and who, as a result of a mental disorder, present an imminent likelihood of serious harm to themselves or others, or who are gravely disabled.⁵
- Persons who are found by the court to be sexual psychopaths.⁶
- Persons committed or confined to a state correctional institution or facility, when in the judgment of the secretary of corrections, and with the consent of the secretary of DSHS, the welfare of such persons necessitates their transfer, for observation, diagnosis or treatment, to a state institution or facility for the care of the mentally ill.⁷
- Criminal defendants charged with felonies who are found by the court to be incompetent to stand trial.⁸
- Criminal defendants who pleaded guilty by reason of insanity, or if there are doubts about his or her competency may be committed without an initial assessment of the defendant's mental condition if the defendant is charged with first or second degree murder, if it is

¹ RCW 71.05.030.

² RCW 71.34.710(1).

³ RCW 71.34.600(1).

⁴ RCW 71.05.040.

⁵ RCW 71.05.050.

⁶ RCW 71.06.060.

⁷ RCW 72.68.031.

⁸ RCW 10.77.086.

likely that an assessment in jail will not be adequate, or if the court finds that assessment outside the jail setting is necessary for the health, safety, or welfare of the defendant.⁹

- Criminal defendants acquitted of a felony by reason of insanity, if the court finds that they present either a substantial danger to others or a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.¹⁰

How is the involuntary commitment process initiated for persons who, as a result of a mental disorder, are gravely disabled or dangerous to themselves or others?

The involuntary commitment process is usually initiated by the filing of a petition for initial detention by the county-designated Mental Health Professional (MHP).¹¹ When the county-designated MHP receives information that a person, age 13 or older, as a result of a mental disorder, is gravely disabled or presents a likelihood of serious harm to self or others, the MHP investigates and evaluates the facts and interviews the person.¹² If the county-designated MHP is then satisfied that the person is gravely disabled or dangerous as a result of a mental disorder and that the person will not voluntarily seek appropriate treatment, the MHP may take the minor into custody, transport the minor to an inpatient evaluation and treatment facility, and then file a petition for initial detention.¹³

May a physician detain a person who is brought to an evaluation and treatment facility or hospital emergency department in order to enable a county-designated MHP to evaluate the person?

Yes, under certain circumstances. If the person is an adult and refuses voluntary admission, and if the professional staff of the facility or hospital believes that the person, as a result of a mental disorder, presents an imminent likelihood of serious harm to self or others, or presents an imminent danger because of grave disability, then the professional staff may detain the person for up to six hours to enable the county-designated MHP to evaluate the person.¹⁴ The six-hour period to detain a person does not begin until the hospital staff determines the necessity for further evaluation by the MHP.¹⁵

If the person is a minor, age 13 or older, and if the professional person in charge determines that the minor suffers from a mental disorder, that inpatient treatment is required, and that the minor is unwilling to consent to voluntary admission, and if the professional person

⁹ RCW 10.77.060(1)(d).

¹⁰ RCW 10.77.110(1).

¹¹ RCW 71.05.160.

¹² RCW 71.34.710(1).

¹³ RCW 71.34.710(1); RCW 71.05.160.

¹⁴ RCW 71.05.050.

¹⁵ *Id.*

believes that the minor meets the criteria for initial detention, then the minor may be detained for up to 12 hours to enable the county-designated MHP to evaluate the minor.¹⁶

May a physician be held civilly or criminally liable with regard to decisions to admit, release, or detain a person for evaluation and treatment?

Generally, no, as long as such decisions were made in good faith and without gross negligence.¹⁷

Does an involuntarily committed patient have a choice of physicians?

Yes. Involuntarily committed patients must be given a reasonable choice of an available physician or other professional person qualified to provide the needed services.¹⁸

Can antipsychotic medication be administered to an involuntarily committed patient without the patient's informed consent?

Under limited circumstances, yes. If antipsychotic medication is used, the physician must attempt to obtain the patient's informed consent.¹⁹ A patient's right to refuse antipsychotic medications does not apply when a patient is gravely disabled or present a likelihood it is determined that the failure to medicate may result in a likelihood of serious harm or substantial deterioration, or substantially prolonging the length of involuntary commitment, so long as there is no less intrusive treatment that is in the patient's best interests.²⁰ Under state rules, Antipsychotic drugs may be administered without the patient's consent when an emergency exists and there is a review of the decision by a second physician within 24 hours.²¹ For purposes of such administration, an "emergency" exists when the patient presents an imminent likelihood of serious harm to self or others, medically acceptable alternatives are unavailable or unlikely to be effective, and the patient's condition is serious enough that the physician determines emergency treatment must be instituted before obtaining an additional concurring opinion by a second physician.²² Absent an emergency, antipsychotic may be administered over a patient's objections or lack of consent when there is an additional concurring opinion by a second physician for treatment up to 30 days.²³ Additional requirements apply for continued treatment beyond 30 days.²⁴ In criminal cases, the court may authorize involuntary medication for the purpose of competency restoration if the defendant is charged with a serious offense.²⁵

¹⁶ RCW 71.34.700.

¹⁷ RCW 71.05.120; RCW 71.34.410.

¹⁸ RCW 71.05.360(4).

¹⁹ WAC 388-865-0570.

²⁰ RCW 71.05.215(1).

²¹ WAC 388-865-0570(2)(a).

²² WAC 388-865-0570(2)(a)(i)-(iii).

²³ WAC 388-865-0570(2)(b).

²⁴ WAC 388-865-0570(2)(c).

²⁵ RCW 10.77.092.

May a physician be held civilly or criminally liable for a decision to administer antipsychotic medications to an involuntarily committed person?

Generally, no, as long as such decision was made in good faith and without gross negligence.²⁶

What general rights are afforded to patients who are involuntarily committed?

The following rights afforded to all patients who have been involuntarily committed:

- No person shall be presumed incompetent solely as a result of receiving an evaluation, or voluntary or involuntary treatment for a mental disorder.²⁷
- Each patient has the right to adequate care and individualized treatment.²⁸
- Each patient shall have the right to treatment by spiritual means through prayer in accordance with their beliefs.²⁹
- Each patient must be given a reasonable choice of available physician, or other health care provider qualified to provide treatment.³⁰

Must a patient who is involuntarily committed for a mental disorder be provided with a statement of rights?

Whenever a person is detained for evaluation and treatment, state law requires that both the person and, if possible, a responsible member of the person's immediate family or the person's guardian must be advised as soon as possible in writing or orally that unless the person is released or consents to voluntary admission for treatment within 72 hours of the initial detention that:³¹

- A judicial hearing in the superior court will be held within 72 hours of the initial detention.
- The person has the right to communicate immediately with an attorney.
- The person has the right to remain silent and that any statement may be used against him or her at the hearing.
- The person has the right to present evidence and to cross-examine witnesses at the hearing.

²⁶ RCW 71.05.120(1).

²⁷ RCW 70.05.360(1)(b).

²⁸ RCW 70.05.360(2).

²⁹ RCW 70.05.360(3).

³⁰ RCW 70.05.360(4).

³¹ RCW 70.05.360(5).

- The person has the right to refuse medications, including antipsychotic medications, beginning 24 hours prior to the hearing.

In addition, state rules specifically require that patients who have been involuntarily committed must be informed orally and in writing in the primary language spoken/used/understood by the person, “You have the right to:³²

- (1) Remain silent and any statement you make may be used against you.
- (2) Access to attorneys, courts and other legal redress, including the name and address of the attorney the mental health professional has designated for you.
- (3) Immediately be informed of your right to speak with an attorney and a review of the legality of your detention including representation at the probable cause hearing.
- (4) Have access to a qualified language interpreter in the primary language understood by you, consistent with chapter 388-03 WAC.
- (5) Have a responsible member of your immediate family if possible, guardian or conservator, if any, and such person as designated by you be given written notice of your inpatient status, and your rights as an involuntary consumer.
- (6) A medical and psychosocial evaluation within twenty-four hours of admission to determine whether continued detention in the facility is necessary.
- (7) A judicial hearing before a superior court if you are not released within seventy-two hours (excluding Saturday, Sunday, and holidays), to decide if continued detention within the facility is necessary.
- (8) Not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided.
- (9) Not to be denied treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.
- (10) Refuse psychiatric medication, except medications ordered by the court under WAC 388-865-0570 but not any other medication previously prescribed by an authorized prescriber.
- (11) Refuse treatment, but not emergency lifesaving treatment unless otherwise specified

³² WAC 388-865-0566.

in a written advance directive provided to the facility.

(12) Be given a copy of WAC 388-865-0585 outlining limitations on the right to possess a firearm."

A detained person retains certain other rights, including the rights to wear his or her own clothing, use personal possessions, use a reasonable amount of money for canteen expenses and small purchases, access individual storage space, receive visitors at reasonable times, have reasonable access to a telephone and writing materials, discuss treatment plans and decisions with professionals, refuse consent to antipsychotic medications (unless mandated pursuant to a hearing), refuse consent to electroconvulsive therapy or psychosurgery, and deal with property or contracts unless declared incompetent in a court proceeding.³³

A person must be given a written statement of his rights upon leaving a facility following evaluation or treatment for a mental disorder.³⁴

May the parent of a minor initiate inpatient mental health treatment of the minor without the minor's consent?

Yes. A parent may bring, or authorize the bringing of, his or her minor child, even one age 13 or older, to an evaluation and treatment facility and request that the professional person examine the minor to determine whether the minor has a mental disorder and is in need of inpatient treatment.³⁵ The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the facility.³⁶ Parental authorization, or the authorization of a person who may otherwise legally consent on behalf of a child, is required for inpatient treatment of a minor under 13 years of age.³⁷

An appropriately trained professional person (a physician or other mental health professional empowered by an evaluation and treatment facility with authority to make admission and discharge decisions)³⁸ may evaluate whether the minor has a mental disorder.³⁹ The evaluation must be completed within 24 hours of the time the minor was brought to the facility unless the professional person determines that the minor's condition necessitates additional time for evaluation.⁴⁰ In no event may the minor be held more than 72 hours for evaluation.⁴¹

³³ RCW 71.05.217; RCW 71.34.355; WAC 388-865-0561.

³⁴ RCW 71.05.360(1)(c).

³⁵ RCW 71.34.600(1); RCW 71.34.375.

³⁶ RCW 71.34.600(2).

³⁷ RCW 71.34.530.

³⁸ RCW 71.34.020(18).

³⁹ RCW 71.34.600(3).

⁴⁰ *Id.*

⁴¹ *Id.*

If, in the judgment of the professional person, it is determined that it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment.⁴² Within 24 hours of completion of the evaluation, the professional person must notify DSHS if the child is held for treatment and of the date of admission.⁴³ Within not less than 7 nor more than 14 days after the date the minor was brought to the facility, DSHS must assure that any minor admitted to inpatient treatment at the initiation of a parent receives an independent review by a physician or other mental health professional to determine whether it is a medical necessity to continue the minor's treatment on an inpatient basis.⁴⁴

No provider is obligated to provide treatment to a minor brought to an evaluation and treatment facility by a parent.⁴⁵ Nor may a provider admit a minor under such circumstances unless it is medically necessary.⁴⁶

Parents of a child must be given a notice by the evaluation and treatment center that includes all of the available treatment options for the child allowed by law and the procedures to be followed to utilize the treatment options.⁴⁷

No minor receiving inpatient treatment under such circumstances may be discharged from the facility based solely on his or her request,⁴⁸ but must be discharged immediately upon written request of the parent.⁴⁹ Before the DSHS independent review is conducted, the professional person must notify the minor of his or her right to petition the superior court for release from the facility.⁵⁰

Where may a physician find additional information regarding mental health services?

More information regarding mental health services may be found at the Department of Social and Health Services website: <http://www.dshs.wa.gov/dbhr/mhfaqs.shtml#dbhr>.

⁴² RCW 71.34.600(1).

⁴³ RCW 71.34.600(3).

⁴⁴ RCW 71.34.610(1).

⁴⁵ RCW 71.34.600(4).

⁴⁶ *Id.*

⁴⁷ RCW 71.34.375.

⁴⁸ RCW 71.34.600(5);

⁴⁹ RCW 71.34.650(4).

⁵⁰ RCW 71.34.600(6).