

IN THE COURT OF COMMON PLEAS, PROBATE DIVISION, GEauga COUNTY, OHIO
Judge Timothy J. Grendell

Information Sheet
Civil Commitment

WARNING

This Information Sheet is intended to provide you with a brief overview of the subject matter. It may not provide you with all information that you require to be fully informed of the law that is applicable to your case. Additionally, the information may not accurately describe the pertinent sections of the Ohio Revised Code that are referenced in the footnotes. You should read those sections that are referenced. The Ohio Revised Code has a link on the Court's website. Additionally, you should consider reading those sections that are footnoted using "Page's Ohio Revised Code Annotated," which can be found at the Geauga County Law Library in the basement of the Courthouse at 100 Short Ct. Street, Chardon, Ohio 44024. Page's Ohio Revised Code Annotated also will provide you a summary of applicable court decisions (known as "case law"). While the Help Center can provide you with a limited amount of information, the Help Center staff cannot provide you with legal advice, and this Information Sheet is not intended to provide you with legal advice that is applicable to your case. You must decide how to best use the information provided. In the footnotes you will see a reference such as "R.C. 5122.11." That refers to Ohio Revised Code Section 5122.11, which is found in R.C. Title 51 and in R.C. Chapter 5122.

Background

Some adults, by reason of disease or illness, may represent a substantial risk of physical harm to self or others, as manifested by recent behavior, which could be suicidal, violence, or threats of violence. Assuming that the challenged adult refuses to be admitted to a medical facility for immediate evaluation and treatment, probate court has the authority in some circumstances to order that person to be detained and transported to an appropriate medical facility for evaluation and treatment. This information sheet will discuss two methods, which are:

- Hospitalization of Mentally Ill¹
- Involuntary Treatment for Alcohol and other Drug Abuse²

¹ R.C. Chapter 5122

² R.C. 5119.90 through 5119.98

Hospitalization of Mentally Ill (“Civil Commitment”)

- “mentally ill person subject to court order” In all events, the probate court may not issue a civil commitment order under R.C. Chapter 5122 unless the Court determines that the challenged person meets the definition of “mentally ill person subject to court order.” That definition is set forth in R.C. 5122.01(A) and (B). At the risk of oversimplification, the major aspects of the definition include:
 - **You are likely to harm yourself** - “Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm.”
 - **You are likely to harm other people** - “Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness.”
 - **You are unable to take care of your own needs** - “Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person’s basic physical needs because of the person’s mental illness and that appropriate provision for those needs cannot be made immediately available in the community.”
 - **You need treatment to protect your rights or someone else’s rights** - “Would benefit from treatment for the person’s mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person.”
- Affidavit of Mental Illness³ The Court only becomes involved with the “civil commitment” process after a person files with the Court an Affidavit of Mental Illness. While any person can file that affidavit, typically, that affidavit is prepared and filed by a healthcare professional, who has evaluated the challenged person, or a family member who has observed the challenged person. The challenged person must be located in Geauga County. There are two different processes for civil commitment:
 - Emergency Hospitalization - “Pink Slip” Process⁴
 - Immediate Transport by Professional. A “professional,” who has reason to believe that a person is a *mentally ill person subject to court order*, may detain and transport that challenged person to an appropriate medical facility. A “professional” is defined in R.C. 5122.10(A) and includes a police officer or deputy sheriff. In Geauga County, typically the challenged person is transported to UH Geauga Medical Center, at 13207 Ravenwood Drive, Chardon, Ohio 44024.

³ R.C. 5122.11

⁴ R.C. 5122.10

- “Pink Slip”⁵ Upon arrival at the medical facility, the professional must prepare and submit to the medical facility a written statement that essentially describes why that professional believes that the challenged person is a *mentally ill person subject to court order*.
- 24-Hour Exam.⁶ Within 24 hours after arrival, the medical staff must examine the challenged person.
 - If after that examination the facility’s chief clinical officer⁷ determines that the challenged person is NOT a *mentally ill person subject to court order*, then that challenged person shall be immediately released (unless the Court has previously issued a temporary order of detention).
 - If after that examination the facility’s chief clinical officer determines that the challenged person IS a *mentally ill person subject to court order*, then that challenged person may be detained at that medical facility for three-court days after the expiration of the initial 24-hour period.
 - The chief clinical officer must cause a Report (a “Report to Court”) to be prepared that sets forth the findings of the initial 24-hour exam and the basis for the determination that the challenged person is a *mentally ill person subject to court order*.
 - In some cases, the chief clinical officer may elect to transport the challenged person to another medical facility that is better equipped to handle the challenged person.
 - If three-court days elapse and no court order of detention is issued, the medical facility must discharge the challenged person.⁸
 - In all events, a challenged person, who is 18 years or older, may elect a voluntary admission to the medical facility, which will avoid any court proceedings.⁹
- File Affidavit of Mental Illness. If after the initial 24-hour exam the facility’s chief clinical officer determines that the challenged person IS a *mentally ill*

⁵ R.C. 5122.10(B)

⁶ R.C. 5122.10(D)

⁷ 5122.01(K)

⁸ R.C. 5122.10(E)

⁹ See R.C. 5122.10(E) and 5122.02

person subject to court order, then he or she may cause an Affidavit of Mental Illness to be prepared and filed with the Court. Typically, that affidavit is prepared by a social worker and promptly delivered to the Court before the expiration of the three-court day period in order to avoid having to discharge the challenged person.

- In addition to the Affidavit of Mental Illness, the person presenting that affidavit to the Court will deliver to the Court a copy of the Report to Court, which supports the Affidavit of Mental Illness.
- No Hospitalization The other process for civil commitment starts by any person preparing and filing with the Court the form titled “Affidavit of Mental Illness” (GC PF 46.0). The probate clerk has the appropriate form. Additionally, if the challenged person is not hospitalized, then the person filing that affidavit must prepare another form titled “Sheriff’s Information” (form GC PF 46.1), which assists the Sheriff to locate and identify the challenged person.

Note - prepare and file both form titled “Affidavit of Mental Illness” (GC PF 46.0) and the form titled “Sheriff Information” (GC PF 46.1).

- Initial Probate Court Action

- Probable Cause Determination Upon the filing of the Affidavit of Mental Illness, the Judge (or magistrate) will review that affidavit (and the Report to Court). Typically, the Judge will interview the person who signed the Affidavit of Mental Illness.
 - No Probable Cause. If the Court DOES NOT find probable cause that the challenged person is a *mentally ill person subject to court order*, then the Court will not issue an Order of Detention, and if the challenged person is held in a medical facility that person will be discharged.
 - Probable Cause. If the Court DOES find probable cause that the challenged person is a *mentally ill person subject to court order*, then the Court may issue an Order of Detention.¹⁰ In that case:
 - If the challenged person is at a medical facility, then that facility will continue to hold that person until a Hearing is held (discussed below).
 - If the challenged person is NOT at a medical facility, then the probate clerk will deliver to a deputy sheriff (1) the Order of Detention and (2) the Sheriff’s Information sheet, and that deputy sheriff will detain that person and transport that person to the appropriate medical facility

¹⁰ An Order of Detention is referred to in R.C. Chapter 5122 as a “temporary order of detention” or ‘TOD.’”

(typically UH Geauga Medical Center), where that person will be examined and held until a Hearing is held.

- Additionally, the probate clerk will deliver to the deputy sheriff the form “Report to Court,” which the staff of the medical facility must prepare and promptly return to the Court following an initial examination.¹¹
- Initial Hearing.¹² If the challenged person is involuntarily detained, then the Court shall hold an Initial Hearing within **five court days** after the earlier of (1) filing of the Affidavit of Mental Illness or (2) the date of detention.¹³
 - Continuance. For good cause shown, the Court may continue the Initial Hearing, but the continuance must be not greater than **10 days** after the earlier of (1) filing of the Affidavit of Mental Illness or (2) the date of detention.
 - Place. If the challenged person is detained at a medical facility, typically the Court will hold the Initial Hearing at the medical facility. In that case, the Court will record the proceeding using a tape recorder. The Court may hold that hearing at the courthouse or other suitable location, including in another county.¹⁴
 - Waiver. The challenged person, either directly or through his or her attorney may waive the Initial Hearing. In such case, if that person is not discharged or voluntarily applies for admission, then the Court must hold a Full Hearing not later than 30 days after the original detention.¹⁵
 - Appointment of Counsel. Promptly after the Court determines there is probable cause that the challenged person is a *mentally ill person subject to court order*, the Court will appoint legal counsel for that person, although that person has the right to retain legal counsel of his or her own choosing.¹⁶
 - Notice. Promptly after receipt of the Affidavit of Mental Illness, the Court shall notify (typically written notice) all interested person of the date of the Initial Hearing, including the challenged person, a guardian, the person filing that affidavit, legal counsel for the challenged person, chairman of the Geauga County Mental Health Board, the chief clinical officer of the medical facility, and designated representative or family member.¹⁷

¹¹ See R.C. 5122.13 for more detail regarding the medical process to determine whether the challenged person is a *mentally ill person subject to court order*.

¹² R.C. 5122.141

¹³ R.C. 5122.141(B)

¹⁴ R.C. 5122.141(B)

¹⁵ R.C. 5122.141(E)

¹⁶ See R.C. 5122.15(A)(2), (3), and (4)

¹⁷ R.C. 5122.12

- Pre-hearing Examination.¹⁸ In addition to the Report to Court, in preparation for the Initial Hearing the Court may appoint a psychiatrist or licensed clinical psychologist to examine the challenged person and submit to the Court a written report.
- Outcome of Initial or Full Hearing.
 - Clear and Convincing Evidence. The primary purpose of the Initial or Full Hearing, as the case may be, is for the Court to determine whether the evidence presented by the county prosecutor, who represents the Geauga County Board of Mental Health, as rebutted by the attorney for the challenged person, is “clear and convincing” as to whether the challenged person is a *mentally ill person subject to court order*.
 - If the evidence is not clear and convincing, then the Court will order that the challenged person be immediately discharged.¹⁹
 - If the evidence is clear and convincing, then the Court will order a treatment plan, which typically includes additional hospitalization.²⁰
 - Treatment Plan.²¹
 - Inpatient. R.C. 5122.15(C) provides the Court with a variety of options regarding inpatient treatment facilities. The Court order for inpatient treatment should take into account the least restrictive alternative available.²²
 - 90-Day Period. The court order must not exceed a 90-day period of inpatient treatment. If the doctors providing treatment conclude that the patient requires additional treatment beyond the end of the initial 90-day period, then the county prosecutor may file with the Court an application to extend treatment beyond the initial 90-day period; provided that application is filed at least 10 days before the expiration of the initial 90-day period. Failing the timely filing of such 10-day application, the facility shall discharge the patient.²³ If the Court extends the order for inpatient treatment beyond the initial 90-day period, then the Court may order continued treatment for a period no longer than two years. In such case, the Court must hold a full hearing at least every two years, and upon request of the patient, at least every 180 days. You should carefully read R.C. 5122(H) for more detail.

¹⁸ R.C. 5122.14

¹⁹ R.C. 5122.15(B)

²⁰ R.C. 5122.15(C)

²¹ R.C. 5122.15(C)

²² R.C. 5122.15(E).

²³ R.C. 5122.15(H)

- Outpatient. The Court may order “assisted outpatient treatment,” which does not involve overnight hospitalization. Such treatment will likely require periodic appointments with a mental health professional, who may prescribe medication.
- Forced Medication. If a patient refuses to take prescribed medication, the Court may order that medication be provided by mental health professionals against a patient’s wishes.²⁴

Involuntary Treatment for Substance Abuse.²⁵

- Background. The primary purpose of this process is for Court intervention to assist a person who is not a *mentally ill person subject to court order*, but rather is a person who:
 - suffers from alcohol and other drug abuse; and
 - presents an imminent danger or imminent threat of danger to self, family, or others as a result of alcohol and other drug abuse, or there exists a substantial likelihood of such a threat in the near future; and
 - can reasonably benefit from treatment.²⁶
- Initiation of Process.²⁷ Unlike an Affidavit of Mental Illness, which may be filed by any person, only a spouse, relative, or guardian of the person (the “Petitioner”) can start the proceedings to cause a court order to have the affected individual detained and hospitalized by filing with the court a petition, known as “Petition For Involuntary Treatment For Alcohol And Other Drug Abuse” (Form 26.0). Because of the complexity and potential cost of this proceeding, the Help Center highly recommends that the Petitioner first retain legal counsel and obtain legal advice.
- Requirements. The Petitioner must cause the following to be filed with that petition:
 - Doctor’s Certificate. A doctor must prepare and sign a “Certificate of Physician” (Form 26.1). That doctor must have examined the affected person no later than two days before filing the petition.²⁸
 - Treatment Provider Statement. The intended treatment provider must prepare and sign form “Statement of Treatment” (Form 26.3).²⁹ That statement includes a

²⁴ See the Supreme Court of Ohio & The Ohio Judicial System - Bench Cards “Civil Commitment of the Mentally Ill,” <https://www.supremecourt.ohio.gov/JCS/CFC/resources/probateBenchCards/mentallyIll.pdf>

²⁵ R.C. 5119.90 to 5119.98

²⁶ R.C. 5119.92

²⁷ R.C. 5119.93

²⁸ R.C. 5119.93(C)(1)

²⁹ R.C. 5119.93(C)(2)

statement of the intended provider's willingness to provide the required treatment and an estimate of the treatment cost.

- Commitment to Pay Treatment Cost.³⁰ The petition must include a commitment by the Petitioner to pay the treatment cost to the provider. Moreover, the Petitioner must either deliver to the Clerk:
 - a security deposit of at least one-half of the estimated treatment cost (as set forth in the "Statement of Treatment" (Form 26.3)), or
 - a "Guarantee of Payment," as provided for in Form 26.0.
- Examination of Petitioner.³¹ Upon filing the petition (and other required documents and payment), the Court will examine the Petitioner under oath to determine the accuracy of the allegations in the petition. If the Court determines that there is probable cause to find that the allegations are true and that the affected individual will benefit from treatment (See Form 26.10), then the Court shall do all of the following:
 - Schedule a hearing within seven days (See Form 26.11) to determine if there is clear and convincing evidence that the affected individual may reasonably benefit from treatment for alcohol and other drug abuse; and
 - Notify the affected person:
 - the legal guardian, if any and if known, and the spouse, parents, or nearest relative or friend of the affected person concerning the allegations and contents of the petition and of the date and purpose of the hearing (see Form 26.4); and
 - that the affected individual may retain counsel and, if he or she is unable to obtain an attorney, then he or she may be represented by court-appointed counsel at public expense if he or she is indigent. Upon the appointment of an attorney to represent an affected person, the Court shall notify the affected person of the name, address, and telephone number of the attorney appointed to represent the affected person (See Forms 26.5 and 26.7); and
 - that the Court shall cause the affected person to be examined, not later than 24 hours before the hearing date, by a physician for the purpose of a physical examination and by a qualified health professional for the purpose of a drug and alcohol addiction assessment and diagnosis (See Form 26.5); and
 - that the affected person may have an independent expert evaluation of that person's physical and mental condition conducted at the affected person's own expense; and

³⁰ R.C. 5119.93(D)

³¹ R.C. 5119.94

- cause the affected person to be examined no later than 24 hours before the hearing date by a physician for the purpose of a physical examination and by a qualified health professional for the purpose of a drug and alcohol addiction assessment and diagnosis;
- conduct the hearing within seven days after filing the petition.
- Failure to Attend Examination.³² If the affected person fails to attend the examination to be conducted within 24 hours of the scheduled hearing, then the Court may issue a summons that orders the affected person to appear for examination at a time and place specified in the summons (See Form 26.12). If the affected person fails to abide by the summons, then the Court may order the sheriff or other police officer to transport the affected person to the facility (See Form 26.13).
- Emergency Involuntary Treatment.³³ Upon examination and certification by a qualified health professional that the affected person meets the criteria specified in R.C. 5119.92, the Court may order the person hospitalized for a period not to exceed 72 hours if the Court finds by clear and convincing evidence that the affected person presents an imminent threat of danger to self, family, or others as a result of alcohol and other drug abuse. However, if the hearing to be held under R.C. 5119.94 (see below) will not be held within 72 hours, then the Court may order the affected person hospitalized until that hearing (See Form 26.6). In making its emergency treatment order, the Court will inform the affected person that he or she may immediately make a reasonable number of telephone calls or use other reasonable means to contact an attorney, a licensed physician, or a qualified health professional, to contact any other person or persons to secure representation by counsel, or to obtain medical or psychological assistance and that the affected individual will be provided assistance in making calls if the assistance is needed and requested.
- Hearing.³⁴ If at the hearing the Court finds by clear and convincing evidence that the affected person may reasonably benefit from treatment, the Court may order the treatment after considering the qualified health professionals' recommendations for treatment that have been submitted to the Court. If the Court orders the treatment, then the Court will order the treatment to be provided by an appropriate health professional or facility (See Form 26.14). The affected person's failure to undergo and complete any treatment ordered is contempt of court. If, at any time after the petition is filed the Court finds that there is not probable cause to continue treatment or if the Petitioner withdraws the petition, then the Court shall dismiss the proceedings against the respondent.

Three Other Considerations. In addition to the Civil Commitment process for a *mentally ill person subject to court order* and the process to assist a person affected by alcohol or drug abuse, there are three other processes that may assist a challenged adult.

- Emergency Guardianship. A person who is concerned about a challenged adult, whether the result of mental illness or addictive behavior, may also apply for authority to act on

³² R.C. 5119.96

³³ R.C. 5119.95

³⁴ R.C. 5119.94(D)

behalf of a challenged adult by applying for an “emergency” guardianship of the person for the challenged adult. For more detail see the Information Sheet titled “Guardianship of Incompetent Adult.” In some cases, guardianship of the person could be considered in conjunction with the two processes discussed above in this Information Sheet.

- Developmental Disabilities. If an adult is challenged as the result of developmental disabilities, typically the result of birth trauma or childhood illness, then R.C. Chapter 5123, and in particular R.C. 5123.701, permits a Court to order short-term care for such challenged adult, who has an “intellectual disability.”³⁵ The process is started by a person preparing and filing with the Court an “Affidavit of Developmental Disability.”³⁶ Again, the Help Center highly recommends that a concerned person obtain legal advice before acting.
- Adult Protective Services. An adult, who is neither a *mentally ill person subject to court order* nor a person affected by alcohol or drug abuse, may suffer from abuse, neglect, or exploitation, typically an elderly adult. Geauga County Job & Family Services (“JFS”) is empowered and trained to assist such challenged adults. A person who concerned about such a challenged adult should report the matter to JFS at 440-285-9141. JFS can file a Petition for Protective Services with the Court and offer a variety of services to protect that challenged adult.

LEGAL PRACTICE IN THE PROBATE COURT IS RESTRICTED BY LAW TO ATTORNEYS WHO ARE LICENSED BY THE SUPREME COURT OF OHIO AND INDIVIDUALS WHO ARE HANDLING THEIR OWN LEGAL MATTERS. IF AN INDIVIDUAL WISHES TO HANDLE HIS OR HER OWN CASE, THAT PERSON MAY ATTEMPT TO DO SO, HOWEVER DUE TO THE COMPLEXITY OF THE LAW AND THE DESIRE TO AVOID COSTLY ERRORS, MANY PERSONS WHO HAVE MATTERS BEFORE THE COURT ARE REPRESENTED BY AN ATTORNEY.

IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT’S FORMS, BE AWARE THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE GEAUGA COUNTY PROBATE COURT, INCLUDING THE HELP CENTER STAFF, FROM PROVIDING YOU WITH LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, THEN YOU SHOULD CONTACT AN ATTORNEY OF YOUR CHOOSING.

³⁵ Defined in R.C. 5123.01(N) as “a disability characterized by having significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior, manifested during the developmental period.”

³⁶ R.C. 5123.71