

## **Involuntary Commitment for Mental Health Treatment: Checklist for Respondents' Attorneys**

This checklist applies after Special Counsel or the appointed attorney receives notice of the patient's admission. Consult the indicated forms as necessary.

### **Receipt and Review of Documents**

- Receive petition or affidavit of physician or eligible psychologist, accompanied by affidavit(s) of examiner. This will occur by different methods depending on local practice. Counsel should inquire of the clerk of court and the records clerk of the facility to determine local practice.
- Review documents for compliance with statutory requirements:

### **Petition (Form AOC-SP-300)**

- Is petition signed and sworn before an authorized officer? G.S. 122C-261(a).
- Was the petition properly clocked in with a date and time stamp?
- Is box 1, alleging mental illness and danger to self or others, checked?
- Do the allegations in the petition support on their face a finding of reasonable grounds to believe that the respondent is mentally ill and either dangerous to self or others or in need of treatment to prevent further disability or deterioration that would predictably result in dangerousness?
- Who does the petition indicate are witnesses to the behaviors and actions alleged in the petition?

### **Findings and Custody Order Involuntary Commitment (Form AOC-SP-302)**

- Is the Custody Order properly signed and dated with the time noted by the appropriate court official?
- Is box 1, alleging mental illness and danger to self or others under "Findings," checked?
- Is box 1 and/or 2 checked under "Custody Order"?
- Does the "Return of Service" on the back indicate that the respondent was taken into custody within 24 hours of issuance of the custody order?
- Did the law enforcement officer complete either Section A, B, C, or D appropriately on the back of the custody order?

### **Affidavit of Examining Physician or Eligible Psychologist (First Examination Report) (Form DMH 572-01)**

- Was the examination performed within 24 hours of the time the respondent was taken into custody of the law enforcement officer?
- Was the first examination performed by either a physician or eligible psychologist?
- Is the examination report properly signed?

- Does the examination report indicate that the examiner performed a personal examination, and does not merely repeat the allegations of the petition?
- Do the findings of the examiner support the conclusion of a diagnosis of mental illness?
- Do the findings of the examiner support the conclusion of a finding of danger to self and others?
- Does the examiner's report recommend inpatient commitment?  
Recommendation: \_\_\_\_\_

**Affidavit of Physician (Second Examination Report) (Form DMH 572-01)**

- Was the examination performed within 24 hours of admission to a 24-hour facility?
- Was the examination performed by a physician?
- Is the examination report properly signed?
- Does the examination report indicate that the examiner performed a personal examination, and does not merely repeat the allegations of the petition?
- Do the findings of the examiner support the conclusion of a diagnosis of mental illness?
- Do the findings of the examiner support the conclusion of a finding of danger to self and others?
- Does the examiner's report recommend inpatient commitment?  
Recommendation: \_\_\_\_\_

**Medical Records Review**

- Review records in patient's chart(s) at 24-hour facility.
- Do Progress Notes contain staff observations of manifestation of symptoms of mental illness?
- Do Progress Notes contain staff observations of dangerous behavior toward self or to others? \_\_\_\_\_
- Results of drug testing: \_\_\_\_\_
- Current medications: \_\_\_\_\_
- Psychological examination or other special examinations or reports? \_\_\_\_\_
- Any pending criminal charges noted in record?  
\_\_\_\_\_

**Interview with Client**

**Attorney role:**

- Meet with client as soon as possible.
- Explain you represent client, no one else.

- ❑ Inform client that he or she may retain private attorney (explain time parameters, request that retained attorney call you, request to be on stand-by in event retained attorney does not appear).
- ❑ Explain that representation for commitment proceeding only.

**Explanation of proceeding:**

- ❑ Special proceeding reviewing hospitalization, jail not a possibility.
- ❑ Hearing before a judge, but not in regular courtroom (describe hearing room).
- ❑ Confidential proceeding, hearing, and court file.
- ❑ Time and date of hearing.
- ❑ Venue—right to transfer if petition initiated in another county.
- ❑ Waiver of appearance—importance of appearance if contesting.
- ❑ Witnesses for State and for client may be called.
- ❑ Continuance may be requested by client, by State, or on motion of court.

**Discussion of case:**

- ❑ Review allegations of petition—get client’s side of events.
- ❑ Discuss medical evidence.
- ❑ Ask what treating psychiatrist or social worker has told client about treatment team recommendation on length of stay.
- ❑ Ask client if there are prior commitments or other information on mental illness or danger that might be raised by State’s witnesses.
- ❑ Explain consequences of involuntary commitment: \_\_\_ firearms \_\_\_ military
- ❑ Does client have an alternative plan to inpatient care (housing, job, outpatient care, day program, etc.)?
- ❑ Client states would agree to (sign as voluntary, shorter stay, continuance if early discharge pending, etc.) \_\_\_\_\_
- ❑ Discuss possible witnesses, obtain client consent to contact/subpoena.
- ❑ Advise of possible technical motions (i.e., motion to dismiss for failure of petition to be signed but possibility of new petition).

**Explanation of hearing procedures:**

- ❑ Attorney for State or petitioner to call witnesses—possibly petitioner, psychiatrist, social worker, staff, or family.
- ❑ Witnesses for client—discuss allegations, likely witnesses, advisability of client testifying.
- ❑ Courtroom demeanor—not get upset, not speak unless testifying, stay seated unless called to testify, whisper quietly or write note if need to communicate with attorney.
- ❑ Closing arguments—client should not react or speak during.



### **Follow-up to Hearing When Client Committed**

- ❑ Discuss order with client, reiterate that amount of days committed is *maximum* inpatient stay without a rehearing and that can be discharged sooner.
- ❑ Explain outpatient commitment, if any, importance of attending appointments, and consequences of failure to comply.
- ❑ Explain that representation continues for duration of commitment and through any appeal.
- ❑ Advise of appeal right, discuss limitations (length of time to appeal, likely discharge or rehearing well before appeal decided).

