

Involuntary Commitment for Substance Abuse 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 from 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 (Appendix A, Form AOC-SP-300):

- Is petition signed and sworn before an authorized officer? G.S. 122C-281(a).
- Was the petition properly clocked in with a date and time stamp?
- Is box 2, alleging substance abuse 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 a substance abuser and is 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 (Appendix A, Form AOC-SP-302):

- Is the Custody Order properly signed and dated with the time noted by the appropriate court official?
- Is box 2, alleging substance abuse and danger to self or others under "Findings," checked?
- Is either 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) (Appendix A, Form DMH 572-01)

- Was the examination performed within 24 hours of the time the respondent was taken into custody by a 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 substance abuse?
- Do the findings of the examiner support the conclusion of a finding of danger to self and others?
- Does the examiner's report recommend substance abuse commitment?
Recommendation: _____
- Did the examiner recommend that the respondent be held at a 24-hour facility pending hearing? ___ yes ___ no

Affidavit of Physician When Respondent Held Pending Hearing (Second Examination Report) (Appendix A, 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 substance abuse?
- Do the findings of the examiner support the conclusion of a finding of danger to self and others?
- Does the examiner's report recommend substance abuse commitment?
Recommendation: _____

Medical Records Review: Respondent Held Pending Hearing

- Review records in patient's chart(s) at 24-hour facility.
- Do Progress Notes contain staff observations of manifestation of symptoms of substance abuse?

- 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 or past convictions noted in record?

Medical Records Review: Respondent Released Pending Hearing

- Consult with client regarding existence of treatment records and obtain client's consent to review or copy records.
- Contact medical records clerk and arrange to review or copy records.
- Results of drug testing: _____
- Current medications: _____
- Psychological examination or other special examinations or reports?

- Any pending criminal charges or past convictions noted in record?

Interview with Client

Attorney role:

- Meet with client as soon as possible; contact client to arrange appointment if released pending hearing.
- 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).
- 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 respondent held in 24-hour facility pending hearing and petition initiated in another county.
- No waiver of appearance.
- Witnesses for State and for client may be called.
- Continuance may be requested by client, State, or responsible professional, or may be on motion of the court.

Discussion of case:

- Review allegations of petition—get client's side of events (attach interview notes).
- Discuss medical evidence.
- Ask what treating treatment provider has told client about treatment recommendation.
- Ask client if there are prior commitments or other information on substance abuse or danger that might be raised by State's witnesses.

Action Needed:

___ Motion to dismiss Reason: _____

___ Motion to continue Reason: _____

___ Contested hearing: ___ Client appear

 ___ Not appear ___ Motion to Waive Appearance

___ Not contested: ___ Client appear

 ___ Not appear ___ Motion to Waive Appearance

Client agrees to:

___ Inpatient

___ Outpatient

___ Split: ___ Inpatient ___ Outpatient

___ Client signed voluntary

___ Client was discharged

Follow-up to Hearing When Client Committed

- Discuss order with client, reiterate that amount of days committed is *maximum* substance abuse commitment without a rehearing and that can be discharged from commitment sooner.
- Commitment is to treatment of area authority or physician, not facility—importance of cooperation.
- Maximum of 45 consecutive days of inpatient treatment without supplemental hearing.
- 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).

