# 22
# CIVIL COMMITMENT

Civil commitment standards are governed by state laws and can vary substantially state to state. As a practicing psychiatrist, you'll want to familiarize yourself with your jurisdiction's emergency/short-term and long-term civil commitment laws and consult with your risk management professional or attorney should you have questions. Regardless of the jurisdiction, there are, general issues and potential problems common to most states, and we will discuss those here.

## COMMITMENT PROCEDURES AND TYPES

### Emergency Commitment

Most states have provisions for a short-term commitment in emergency situations until a formal determination can be made. The length of time permitted for a short term commitment varies between states and can range significantly.

Similarly, the criteria permitting involuntary commitment also vary between states. Generally, the patient must be mentally ill and pose a threat to himself or others. Some states require that the threat be "substantial" and "imminent." The procedures for initiating an emergency commitment vary greatly between states. Criteria as to who may file the petition, where it should be filed, or how the patient is to be taken into custody may also vary. Again, you must consult your state statutes.

Prior to the expiration of the emergency commitment, a decision must be made to either release the patient or to petition the court for a probable cause hearing in order to obtain a longer-term involuntary commitment.

### Long-Term Commitment

In virtually every state, a patient cannot be involuntarily committed on a long-term or indefinite basis unless a court (or, occasionally, an administrative agency) determines that he meets the substantive criteria of the state's law. Although the procedures vary, in most states this determination occurs during a hearing, often called a "probable cause" hearing.

The purpose of a probable cause hearing is to determine whether there is substantial evidence that the patient meets the criteria for involuntary hospitalization for a longer period of time. Again, the timing requirements for when a formal commitment determination must be made, vary by state. Moreover, generally, for each additional commitment period requested, another hearing is required.


October 2014 • © American Psychiatric Association

## Commitment of Minors

As the laws vary so widely, if you work with children and adolescents you should familiarize yourself with your state's provisions for the "voluntary" hospitalization of minors. In some states the minor is given a degree of veto power over "voluntary" admissions, in others parents can only commit a child under a certain age voluntarily. Whereas in other states, the minor and the parent must sign the application for commitment. If the child refuses, the parents must initiate involuntary commitment. It is important to check your state law.

## SUBSTANTIVE STANDARDS FOR LONG-TERM COMMITMENT

Commitment of the mentally ill has traditionally been justified as the exercise of two of the state's powers: 1.) *parens patriae,* which rests on the state's interest in caring for and protecting those who cannot care for themselves; and 2.) police power, or the state's power to protect its citizens from potential harm or danger from others. At present, civil commitment laws have much more to do with police power than *parens patriae.* The most common standards for civil commitment are:

- **Mental Illness:** All states currently consider mental illness to be a prerequisite of commitment. While some states delineate what specific psychiatric disorders qualify, others are less clear. Most require that the patient's illness "substantially impair" her functioning to the point where protection or care and treatment are required. Again, you need to familiarize yourself with the state statutes.

- **Dangerousness:** Dangerousness to oneself or others is currently the most common substantive ground for long-term commitment. Although states vary as to the exact definition, *danger to others* is generally defined as risk of substantial physical harm, or injury, to another person or persons. Some states require that this danger be imminent, or immediate, while others go so far as to demand that there be a judicial finding of an overt act that indicates the danger.

  Dangerousness to oneself is accepted in all states as grounds for commitment, but while some may only require that you demonstrate an individual's extreme neglect of his basic needs, others demand evidence that the patient is "gravely disabled." It is important to be aware of the applicable language within your state.

  If the psychiatrist determines that the patient no longer meets the criteria for commitment and the decision is made to release the patient, the psychiatrist should determine what, if any, duty to warn obligations he/she may have under state law to third parties, depending on the patient's clinical presentation during hospitalization.

  - **In Need of Treatment:** The commitment of a person because she is "in need of care and treatment" rather than because of a perceived danger to herself or others falls under the traditional *parens patriae* standard and is

now much less common.  A number of courts have even questioned whether the involuntary commitment of a nondangerous person is consistent with due process.  However, some states still specifically permit involuntary commitment for this cause.

- **Additional Requirements:** Several states apply additional standards for involuntary commitment.  Some states:
    1. Require that a patient be advised of, and given the opportunity for, voluntary commitment.
    2. Condition involuntary commitment on a determination that the patient is likely to benefit from the treatment he'll receive as an impatient, or that the patient's disorder may be responsive to treatment.
    3. Require that the person committed lacks the capacity to make reasoned treatment decisions for herself.
    4. Require that the commitment in a hospital will be the "least restrictive alternative" that will meet a patient's needs.

## LIABILITY FOR WRONGFUL COMMITMENT

The most important safeguards for you in avoiding liability for a commitment decision are to conscientiously abide by the commitment procedures mandated by your state and to conduct adequate patient examinations, documenting carefully the rationale for committing or releasing the patient.  If you reasonably follow the required procedures in good faith, chances diminish that a court will find you liable for wrongful commitment.

A number of courts have held that a psychiatrist participating in commitment proceedings is immune from liability often if there is a good faith basis for the commitment.

## PRACTICAL POINTERS

- Ensure that you are aware of and follow your state's legal standards for involuntary civil commitment.
- As a part of the assessment process, it is important to review relevant medical records and other referring documents.
- If warranted, obtain a second opinion.
- Periodically assess and reassess the patient to determine if he no longer meets the criteria for involuntary commitment.
- It is important to objectively document your findings.  Among other things, document the reasons why the patient is being held involuntarily or being discharged.
- Act reasonably and in good faith.
- Adhere to your ethical guidelines and principles.


October 2014 • © American Psychiatric Association

## OUTPATIENT COMMITMENT

Many states now provide an outpatient alternative to inpatient commitment. Outpatient commitment is a form of civil commitment where the court mandates an individual to comply with a specific outpatient treatment program, although not typically just medication. Generally, the individuals have a history of mental illness, are in need of treatment, have a history of non-compliance, and would likely decompensate into a state of dangerousness to self or others if not treated. Again, as with involuntary inpatient commitment, the legal authority for outpatient commitment comes under the state's *parens patriae* and police powers. States vary in terms of eligibility requirements and commitment processes, including who can petition the court to involuntarily commit a patient to outpatient treatment. The majority of states use criteria similar to those used for inpatient commitment, such as dangerousness to self or others. However, some states also allow outpatient commitment for patients who are at risk for relapse or have a past history of non-compliance.

Outpatient civil commitment should be distinguished from both conditional release and conservatorship/guardianship, which are alternative processes sometimes used to compel compliance with outpatient treatment programs. Under conditional release, the patient must be involuntarily committed on an inpatient basis prior to seeking outpatient commitment. The decision to then release the patient for outpatient treatment rests with the hospital administration rather than the court. Conservatorship/guardianship, on the other hand, is based upon substituted decision-making and gives authority to a third party appointed by the court to consent for the individual to undergo mandatory outpatient treatment.

Psychiatrists contemplating using their state's outpatient commitment statute (if one is available), should consult their attorney and/or risk management professional prior to participating in the commitment process. Before a psychiatrist initiates outpatient civil commitment processes, she should:

- Understand the commitment criteria required by the applicable commitment standard.
- Document the clinical rationale for seeking outpatient commitment, including any past least restrictive treatment alternatives attempted.
- Document the likelihood of treatment success if involuntarily committed as an outpatient.
- Review any past relevant medical records.
- Obtain a complete medical/psychiatric history.
- Adhere to ethical principles and guidelines.
- Act reasonably and in good faith.
- Consult with an attorney or risk management professional.