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INVOLUNTARY CIVIL COMMITMENT  
IN COLUMBUS, OHIO

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Institute on Mental Disability and the Law

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INVOLUNTARY CIVIL COMMITMENT IN COLUMBUS, OHIO

TABLE OF CONTENTS

	<u>Page</u>
PREFACE . . . . .	v
ACKNOWLEDGEMENTS . . . . .	vii
SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS . . . . .	xi
CHAPTER I. INTRODUCTION . . . . .	1
A. Overview of Report . . . . .	1
B. Summary of the Franklin County (Columbus), Ohio System of Involuntary Civil Commitment . . . . .	6
CHAPTER II. STUDY METHODS . . . . .	13
CHAPTER III. PREHEARING MATTERS <u>BEFORE</u> RESPONDENT IS HOSPITALIZED .	21
A. Initiating Involuntary Civil Commitment . . . . .	21
B. Affidavits and Certificates . . . . .	23
C. Prehearing Screening, Investigation, and Review . . . . .	24
D. Custody and Prehearing Detention . . . . .	27
E. Notifying Respondent of Rights . . . . .	31
F. Conclusions and Recommendations . . . . .	33
CHAPTER IV. PREHEARING MATTERS <u>AFTER</u> RESPONDENT IS HOSPITALIZED . .	45
A. Prehearing Treatment . . . . .	45
B. Mental Health Examinations . . . . .	46
C. Opportunities for Voluntary Hospitalization . . . . .	49
D. Discharge and Release . . . . .	51
E. Conclusions and Recommendations . . . . .	53
CHAPTER V. COUNSEL FOR RESPONDENT . . . . .	61
A. The Right to and Role of Legal Counsel . . . . .	61
B. Appointment of Counsel . . . . .	63
C. Adequacy of Legal Counsel . . . . .	65
D. Conclusions and Recommendations . . . . .	67
CHAPTER VI. PROBATE COURT HEARINGS . . . . .	73
A. The Probable Cause Hearing . . . . .	74
B. The Full Hearing . . . . .	77
C. The Roles of the Referee, State's Attorney, and Witnesses .	81
D. Conclusions and Recommendations . . . . .	84

	<u>Page</u>
CHAPTER VII. JUDICIAL CONSIDERATIONS AFTER THE HEARING . . . . .	91
A. Periodic Review Hearings . . . . .	91
B. Appeal, <u>Habeas Corpus</u> , and Other Remedies . . . . .	92
C. Judicial Review of Institutional Practices . . . . .	93
D. Conclusions and Recommendations . . . . .	94
APPENDIX A. FORMS USED IN THE INVOLUNTARY CIVIL COMMITMENT PROCESS IN COLUMBUS . . . . .	A-1
APPENDIX B. OHIO STATUTE ANALYSIS . . . . .	B-1
APPENDIX C. DATA COLLECTION INSTRUMENTS USED IN THE COLUMBUS STUDY	C-1

## PREFACE

This report describes involuntary civil commitment in the metropolitan area of Columbus, Ohio. The study upon which this report is based was part of a larger project undertaken by the Institute on Mental Disability and the Law, National Center for State Courts. The project began on January 1, 1981, and lasted for one year. Funding was provided by a coalition of private foundations. The major funding was provided by a grant from the John D. and Catherine T. MacArthur Foundation of Chicago. Additional grants were made by the Chicago Community Trust, the Columbus Foundation, the New York Community Trust, the Winston-Salem Foundation, and the Della Martin Foundation of Los Angeles.

Two major types of products were to result from this work. The first was to be specific to each metropolitan area (i.e., Winston-Salem, Chicago, Columbus, New York City, and Los Angeles)). The second would build upon what had been learned in those cities, information in the literature, and a comparative analysis of state statutes. This second product would be, at least in part, a practical guide for judges who are involved with civil commitment hearings across the country.

All the information generated from the project was to be pragmatic and utilitarian. Site reports, such as this document, were intended to focus primarily on the manner in which a local system of involuntary hospitalization functioned. Observations were made of how statutory provisions were implemented, where and why practice deviated from statute, and what practices were being followed that were beyond what had been anticipated by statute. Strengths and weaknesses were analyzed and recommendations were made for change and improvement.

The judges' procedural guide was also to be pragmatically oriented, but with a national perspective. It was to be a comprehensive review of how various states approach the problems of civil commitment proceedings, with commentary about which ways seem to be the best. The end result was visualized roughly as a set of procedural standards with commentary. At this writing, the judges' guide document has not been completed and its final form and substance have not been finally determined.

A second major phase of the research project was envisioned for 1982 and 1983, depending upon the award of funds. During this second phase, the Institute on Mental Disability and the Law intends to put the practical tools developed in the first phase into the hands of those who can use them, demonstrate their utility, refine them as necessary, assist in the implementation of their widespread application, and finally, evaluate and refine their use. Six major tasks are proposed: (1) the review, revision, publication, and dissemination of the provisional guidelines and recommendations developed in the first phase for improvement of the commitment process; (2) the development of an information clearinghouse; (3) education and training of court and mental health personnel; (4) technical assistance; (5) demonstrations of model systems; and (6) the maintaining of liaison with user groups.

## ACKNOWLEDGMENTS

This report owes its existence to many people and organizations. Two foundations provided the funds to support this report and the specific research on which it is based. The Columbus Foundation was the major contributor to the work in Columbus. A significant supplement to their funding came from a grant from the John D. and Catherine T. MacArthur Foundation of Chicago. The MacArthur Foundation grant also supplemented the work of this project in four other cities: Chicago; Winston-Salem, North Carolina; New York City; and Los Angeles. Ms. Lou Briggs of The Columbus Foundation lent her assistance and support throughout the study in Columbus. She was always a facilitator.

The management, staff, and Board of Directors of the National Center for State Courts are acknowledged for their contributions in making this project possible. Mr. Edward B. McConnell, Executive Director of the National Center, is responsible for giving birth to the project concept. Professor Anthony L. Guenther, of the College of William and Mary, worked as a consultant to the National Center in evaluating this concept and shaping the idea for a field research project. Members of the National Center's Board of Directors reviewed the project concept and commented on it from the perspective of judges. National Center library staff provided enormous aid in locating and acquiring reference materials throughout the project period. In its final stages, this project was conducted under the auspices of the Institute on Mental Disability and the Law, a subdivision of the National Center for State Courts, devoted exclusively to issues in mental disability and the law. Staff and associates of the Institute, many of whom took an active part in the project and are specifically mentioned below, are also acknowledged for their interest and help.

In the early stages of the project, the research staff received substantive guidance from a remarkably informed group of people known collectively as the National Advisory Board. The individuals in this group helped define the critical research questions, sharpen the project goals, and develop research methods. Their names and affiliations follow:

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Points of view, opinions, and recommendations advanced in this report are those of the project staff only. They do not necessarily represent official policies or positions of the Institute on Mental Disability and the Law, the National Center for State Courts; the agencies that helped fund this research; the court systems affiliated with Columbus, Franklin County, or the State of Ohio; the Ohio Department of Mental Health; or any of the individuals who participated in this research or the organizations with which they are affiliated. The author gratefully acknowledges the contributions made by these people and organizations. But all responsibility for factual errors made or opinions expressed in this report rest with the author.



## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

In the interests of the readers who may first wish to review the conclusions and recommendations before studying the entire text of this report, this section provides an overview. However, the reader is strongly encouraged to refer to the specific chapters of the report in which the bases and rationale for recommendations are discussed in detail. Out of context, and without supporting commentary the recommendations may appear what they are not.

The Columbus involuntary civil commitment process can be summarized in terms of nine discrete steps, corresponding roughly to a set of chronologically ordered events: (1) initiating the commitment procedures; (2) mental health screening, investigation, and review; (3) filing of an application (affidavit) formally declaring the intention to cause the involuntary hospitalization of a person; (4) custody and temporary hospitalization of the person (respondent) who is the subject of the affidavit; (5) examination of the respondent by two doctors before judicial hearings; (6) a judicial hearing of probable cause for involuntary civil commitment; (7) continued short-term involuntary hospitalization or release; (8) an adversarial court hearing, resulting in either involuntary civil commitment by the Probate Court, election of voluntary hospitalization by the respondent, or release; and, (9) periodic judicial review of the commitment.

### Prehearing Matters Before A Person Is Hospitalized

The involuntary civil commitment process in Columbus that occurs before a respondent is hospitalized is exemplary and praiseworthy in terms of the legal rights and protections afforded the respondent, the opportunities for diversion from compulsory hospitalization, and the apparent economy and effectiveness of the procedures. Although there may be deficiencies, as will be discussed below, these are not major. Perhaps the strongest aspect of the pre-hospitalization procedures in Columbus are the pre-screening of respondents and the investigation and review of the affidavit. These procedures promote fair, prompt, and reliable decision-making. The community mental health center screening, especially, is a model for other jurisdictions to adopt. Another strength in the prehearing process is the persistent and repeated notification of rights. Yet another is the requirement that both emergency and judicial hospitalization be supported by written statements. Deficiencies include a lack of adequate training for peace officers and a lack of coordination of components of the prehearing process. Both the strengths and the weaknesses of the pre-hospitalization process are discussed below.

An important strength of the Ohio law is that it provides only two basic mechanisms (emergency and judicial hospitalization) by which involuntary civil commitment and treatment can be initiated and imposed. Because of the safeguards provided, it would seem difficult to set these mechanisms in motion in Franklin County frivolously or improperly. Emergency hospitalization, potentially abusive to the rights and interests of a respondent, if it could be carried out by any person, can

only be carried out by a psychiatrist, licensed clinical psychologist, licensed physician, health officer, parole officer, police officer, or sheriff. These individuals may bring a respondent to the hospital but must provide a written statement, on a prepared form, to the hospital to support emergency hospitalization. The written statement constitutes a formal application for emergency admission to the hospital and must be completed and signed by the person transporting the respondent to the hospital.

Three recommendations for adjustments in the Franklin County procedures for initiating involuntary civil commitment are proposed. The first two recommendations concern improvements in the access to, and information about, emergency hospitalization procedures provided to mental health and law enforcement personnel; the third proposes an augmentation of the function and status of the "mental illness desk" of the Probate Division of the Franklin County Court of Common Pleas.

RECOMMENDATION: THE PREPRINTED FORM, "APPLICATION FOR EMERGENCY ADMISSION," WHICH SETS FORTH THE REQUIREMENTS FOR THE STATEMENTS SUPPORTING EMERGENCY HOSPITALIZATION, SHOULD BE MADE READILY AVAILABLE TO ALL MENTAL HEALTH AND LAW ENFORCEMENT AGENCIES IN FRANKLIN COUNTY, ALONG WITH DETAILED INSTRUCTIONS FOR ITS USE IN INITIATING EMERGENCY ADMISSION.

A significant proportion (some estimates place it at one-half) of the involuntary civil commitments in Franklin County are initiated by the emergency hospitalization procedure. It, nonetheless, remains relatively mysterious to many of the people interviewed in Franklin County.

RECOMMENDATION: TRAINING SHOULD BE PROVIDED TO LAW ENFORCEMENT PERSONNEL WITHIN FRANKLIN COUNTY BY A CONSORTIUM OF INDIVIDUALS FROM THE PROBATE COURT, THE COMMUNITY MENTAL CENTERS IN FRANKLIN COUNTY, THE CENTRAL OHIO PSYCHIATRIC HOSPITAL, HARDING HOSPITAL, AND THE OHIO LEGAL RIGHTS SERVICE IN THE RATIONALE AND PROCEDURES FOR EMERGENCY HOSPITALIZATION. THE BASIS OF THIS TRAINING SHOULD BE A DETAILED DESCRIPTION OF THE PROCEDURES (PERHAPS, A MANUAL) FOR EMERGENCY HOSPITALIZATION PREPARED BY THE PROBATE COURT.

RECOMMENDATION: IN RECOGNITION OF ITS IMPORTANT SCREENING, COORDINATION, AND PUBLIC RELATION FUNCTIONS, ESPECIALLY IN THE EARLY STAGES OF INVOLUNTARY CIVIL COMMITMENT, THE "MENTAL ILLNESS DESK" SHOULD BE UPGRADED AND BE REFERRED TO AS THE "MENTAL HEALTH REVIEW UNIT" OF THE PROBATE COURT. ONE OF THE THREE PROBATE COURT REFEREES NOT PRESIDING AT JUDICIAL HEARINGS SHOULD BE DESIGNATED AS A "MENTAL HEALTH REVIEW OFFICER," AND THE DEPUTY CLERK CURRENTLY MANNING THE "MENTAL ILLNESS DESK" SHOULD BE DESIGNATED AS THE "MENTAL HEALTH REVIEW ASSISTANT." TOGETHER THESE TWO INDIVIDUALS SHOULD PERFORM ALL REFERRAL AND

REVIEW FUNCTIONS FOR THE PROBATE COURT PURSUANT TO  
JUDICIAL HOSPITALIZATION AND PARTICIPATE IN TRAINING  
ACTIVITIES RELATED TO INVOLUNTARY CIVIL COMMITMENT IN  
FRANKLIN COUNTY

Once having passed the procedural safeguards, and opportunities for diversion from compulsory hospitalization provided for the respondent in the initiation of involuntary civil commitment (i.e., making the initial contact with the probate court, having the respondent submit to a mental health examination, and obtaining a certificate supporting the affidavit), the affiant is assisted by the Deputy Clerk of the Probate Court in filing and completing the affidavit and other required documents. This is a significant strength in the Columbus procedures occurring before judicial hearings. Nonetheless, several minor improvements in the process of filing an affidavit may be suggested.

Although the language in the Ohio statute relating to what must be contained in an acceptable affidavit may contribute to some of the vagueness of information provided in affidavits, modifications of practices, without legislative reform, seem possible to meet the charge of some attorneys that statements of facts in the affidavits are insufficient.

RECOMMENDATION: THE DEPUTY CLERK, IN ASSISTING THE AFFIANT IN FILING THE AFFIDAVIT AND COMPLETING OTHER REQUIRED FORMS, AND THE REFEREE, IN MAKING HIS OR HER INITIAL EX PARTE DETERMINATION OF PROBABLE CAUSE, SHOULD BE ENCOURAGED TO BE PARTICULARLY DILIGENT IN ENSURING THAT THE AFFIANT'S WRITTEN STATEMENTS ARE SUBSTANTIATED, WHEREVER POSSIBLE, BY REFERENCES TO THE RESPONDENT'S RECENT ALLEGED BEHAVIOR.

RECOMMENDATION: PSYCHIATRISTS, LICENSED PSYCHOLOGISTS, AND THE COMMUNITY MENTAL HEALTH CENTER "PRE-SCREENERS" SHOULD PROVIDE, AT A MINIMUM, THE RESULTS OF A FULL STANDARD MENTAL STATUS EXAMINATION REPORT AS PART OF THEIR CERTIFICATION IN SUPPORT OF AN AFFIDAVIT.

The Columbus procedures for screening, investigating, and reviewing of mental health cases before the respondent is taken into custody are exemplary. There is obviously less curtailment of liberty for those individuals successfully diverted from judicial hospitalization as a result of the initial contact with the Probate Court, the community mental health centers pre-screening, and finally, the ex parte review of the allegations in the affidavit by a referee. The screening procedures, when successful in diverting mentally ill individuals from judicial hospitalization, also embody the best intents of law and mental health practice by providing the opportunity for treatment in a least restrictive environment that is less disruptive of family, social, and economic ties and activities of the respondent.

Although contemplated in most progressive involuntary civil commitment statutes throughout the country, the Ohio law not excepted, it

is a rare occurrence, indeed, when a respondent remains at liberty pending a judicial hearing but after an affidavit has been filed. Society simply does not seem willing to bear whatever burden may be involved in maintaining contact with a respondent outside of a hospital during the prehearing period, except in very rare domestic cases. The three screening mechanisms employed in Columbus provide prompt, reliable, and effective decision-making about whether respondents should be taken into custody in the first place. In many jurisdictions throughout the country, it is implied that a respondent may, ideally, remain at liberty between the time an affidavit is filed and the judicial hearing (see Section 5122.17 of the Revised Code noted earlier); however, it is tacitly accepted that a respondent must be taken into custody once an affidavit is accepted by the court.

The screening mechanisms also appear extremely advantageous for the people of Columbus because they seem cost-effective. In the absence of such screening mechanisms (assuming even very conservative estimates of the number of people diverted from judicial hospitalization) it is not inconceivable that judicial costs would soar.

RECOMMENDATION: THE PROBATE COURT SHOULD BE ENCOURAGED TO INCREASE ITS COORDINATION WITH THE THREE COMMUNITY MENTAL HEALTH CENTERS IN COLUMBUS IN SCREENING AND DIVERTING INITIAL REQUESTS FOR JUDICIAL HOSPITALIZATION APPLICATIONS.

RECOMMENDATION: SUFFICIENT FUNDING SHOULD BE PROVIDED FOR MAINTAINING COMMUNITY MENTAL HEALTH CENTER PRE-SCREENING OF POTENTIAL RESPONDENTS.

RECOMMENDATION: A PRE-SCREENING PROCEDURE, MODELED AFTER THAT OF THE SOUTHWEST COMMUNITY MENTAL HEALTH CENTER, SHOULD BE ADOPTED FOR USE THROUGHOUT FRANKLIN COUNTY, IF NOT ALREADY DONE SO.

RECOMMENDATION: THE LEGAL AUTHORITY FOR THE COMMUNITY MENTAL HEALTH CENTER PRE-SCREENING SHOULD BE CLARIFIED BY COURT RULE.

RECOMMENDATION: THE EX PARTE REVIEW OF THE AFFIDAVIT AND SUPPORTING DOCUMENTS AND THE DETERMINATION OF PROBABLE CAUSE BY THE REFEREE BEFORE THE ISSUANCE OF A TEMPORARY ORDER OF DETENTION SHOULD BE CONDUCTED MORE RIGOROUSLY.

RECOMMENDATION: RESPONDENTS' ATTORNEYS SHOULD HAVE READY ACCESS TO PRE-SCREENING REPORTS.

RECOMMENDATION: THE COURT SHOULD EXPLORE THE POSSIBILITY OF HAVING THE COMMUNITY MENTAL HEALTH CENTER PRE-SCREENER ASSUME THE ROLE OF THE COURT'S EXAMINER.

The practices in Columbus relating to the transportation of respondents in civil commitment proceedings are generally in keeping with the statutory requirement that every reasonable and appropriate effort should be made to take persons into custody in the least conspicuous manner possible (5122.10). With minor exceptions, the procedures employed by the team of sheriff's deputies on special assignment to the Probate Court serve the interests of economy and efficiency. The manner in which police take respondents into custody without prior judicial approval was neither criticized nor praised by those we interviewed in Columbus.

In our opinion, there are a number of minor deficiencies and weaknesses in the custody and detention procedures in Columbus that are worthy of note. We begin with the clothes that the sheriff's deputies wear and the cars that they drive, when they arrive on the scene to take custody of the respondent. To their credit the deputies interviewed noted both the advantages and the disadvantages of the procedures of using uniformed peace officers and marked police cruisers.

RECOMMENDATION: IN NON-EMERGENCY CASES, RESPONDENTS SHOULD BE TAKEN INTO CUSTODY BY PEACE OFFICERS WEARING PLAIN CLOTHES AND DRIVING UNMARKED VEHICLES, UNLESS THE PEACE OFFICERS HAVE REASON TO BELIEVE THAT THE AUTHORITY OF POLICE IDENTIFICATION IS NECESSARY TO RESTRAIN A RESPONDENT. THE NECESSITY OF UNIFORMED POLICE OFFICERS SHOULD BE CONVEYED BY THE DEPUTY CLERK UPON ISSUANCE OF THE TEMPORARY ORDER OF DETENTION.

RECOMMENDATION: COLUMBUS POLICE OFFICERS SHOULD BE ENCOURAGED TO TAKE OR REFER AS MANY ALLEGED MENTAL HEALTH CASES AS POSSIBLE TO COMMUNITY MENTAL HEALTH CENTERS INSTEAD OF CENTRAL OHIO PSYCHIATRIC HOSPITAL.

RECOMMENDATION: ADEQUATE TRAINING SHOULD BE MADE AVAILABLE FOR PEACE OFFICERS IN FRANKLIN COUNTY ON: THE NATURE AND MANIFESTATIONS OF MENTAL HEALTH DISORDERS, HOW TO COMMUNICATE WITH AND HANDLE MENTALLY DISORDERED INDIVIDUALS AND, IMPORTANTLY, COMMUNITY RESOURCES TO WHICH MENTALLY ILL INDIVIDUALS MAY BE TAKEN OR REFERRED.

Court officials, peace officers, mental health personnel, attorneys, and referees in Columbus are extremely conscientious in informing respondents of their rights. Respondents are notified of their rights repeatedly from the time that they are taken into custody until the Probable Cause Hearing. In general, the Columbus procedures for notification of respondent's rights are exemplary and praiseworthy. In this section, we mention only a few matters for general consideration and make several specific recommendations for making what appears to be a very good system even better.

RECOMMENDATION: IN ACCORDANCE WITH OHIO LAW AND COURT RULES, SHERIFF'S DEPUTIES UPON TAKING A RESPONDENT INTO CUSTODY SHOULD ORALLY INFORM THE RESPONDENT OF HIS OR HER LEGAL RIGHTS, AS WELL AS PROVIDE A WRITTEN STATEMENT OF THOSE RIGHTS.

RECOMMENDATION: WRITTEN STATEMENTS REGARDING LEGAL RIGHTS AND PROTECTIONS SHOULD BE PROVIDED IN SIMPLE LANGUAGE.

RECOMMENDATION: PROCEDURES FOR THE NOTIFYING THE RESPONDENT'S FAMILY SHOULD BE CLARIFIED AND COORDINATED.

RECOMMENDATION: ATTORNEYS SHOULD NOTIFY RESPONDENTS OF THE AVAILABILITY OF APPEAL, WRITS OF HABEAS CORPUS, AND OTHER REMEDIES IN ADDITION TO VOLUNTARY ADMISSION.

#### Prehearing Matters After A Person Is Hospitalized

The strengths clearly outweigh the weaknesses of procedures in the Columbus involuntary civil commitment process, in the period after a respondent is taken into custody and while he or she is in the hospital awaiting a court hearing. Legal safeguards and protections afforded the respondent are balanced with treatment considerations and interests of economy and efficiency.

The treatment of respondents who are involuntarily hospitalized before a judicial hearing is an issue that raises little controversy in Columbus. In practice, most respondents are medicated and provided other types of therapies shortly after they are admitted to the hospital. Except for their legal status, and some of the hospital staff's trepidations about that status and related liability threats, respondents hospitalized on court order are treated essentially the same as any other patients.

RECOMMENDATION: THE POLICIES OF CENTRAL OHIO PSYCHIATRIC HOSPITAL AND PRIVATE MENTAL HEALTH FACILITIES REGARDING APPROPRIATE TREATMENT OF RESPONDENTS ADMITTED INTO EMERGENCY OR JUDICIAL HOSPITALIZATION SHOULD BE CLARIFIED. THESE POLICIES SHOULD BE INFORMED BOTH BY LEGAL OPINION REGARDING THE LIABILITY OF TREATMENT PROVIDERS IMPLEMENTING THESE POLICIES, AND BY MENTAL HEALTH PERSONNEL'S OPINION ABOUT THE APPROPRIATENESS OF CRISIS TREATMENT. IT IS FURTHER RECOMMENDED THAT THE OHIO DEPARTMENT OF MENTAL HEALTH DRAFT AND THE OHIO LEGAL RIGHTS SERVICE REVIEW THESE POLICIES.

RECOMMENDATION: UPON FIRST MEETING WITH THEIR CLIENTS, RESPONDENTS' ATTORNEYS SHOULD FAMILIARIZE THEMSELVES WITH THE TYPE OF PREHEARING TREATMENT GIVEN TO THE RESPONDENT, ESPECIALLY WHEN THE TREATMENT CONSISTS OF MEDICATION THAT IS LIKELY TO AFFECT THE RESPONDENT'S DEMEANOR DURING THE PROBABLE CAUSE HEARING.

Taken as a whole, the mental health examinations provided to respondents before judicial hearings--prescreening, hospital examination at the time of admission, examination by a court expert, and examination by an independent expert--constitute a significant strength in the Columbus system. The protection that these examinations provide against improper involuntary hospitalization is substantial. The prescreening examination is performed at the very early stages of the involuntary civil commitment process and provides adequate opportunities for diversion from compulsory hospitalization. Prompt and reliable decision-making appears to be the rule rather than the exception. The legislative intent in Ohio law for the provision of an independent examination is adequately complied with in practice. Such independent examination is provided for in the laws of many states but rarely occurs in practice as it does in Columbus. Given the enormous influence that examiners have in commitment cases, this automatic provision of an independent examination is commendable both from the point of view of a check on the validity of decisions regarding compulsory hospitalizations and an increase in the confidence in diagnosis and appropriate treatment.

On the negative side, the examinations may be redundant and their results underutilized. The prehearing examination process probably could be better coordinated and be economized without lowering safeguards against improper hospitalization.

RECOMMENDATION: THE PROBATE COURT SHOULD MAKE MUCH GREATER USE OF THE INFORMATION THAT IS ACQUIRED IN THE PRESCREENING EXAMINATION BY THE COMMUNITY MENTAL HEALTH CENTER, THE EXAMINATION UPON HOSPITAL ADMISSION, AND THE EXAMINATIONS BY THE COURT AND INDEPENDENT EXPERT.

RECOMMENDATION: ONCE THE INTEREST OF CHECKING THE VALIDITY AND RELIABILITY OF COMMITMENT DECISIONS IS SATISFIED, THE COURT SHOULD COORDINATE AND COMPILE THE RESULTS OF THE VARIOUS PREHEARING EXAMINATIONS, IN THE BEST INTERESTS OF THE RESPONDENT'S TREATMENT, BY MAKING THESE RESULTS AVAILABLE TO THE HOSPITAL TREATMENT TEAM.

RECOMMENDATION: IN THE INTERESTS OF ECONOMY AND EFFICIENCY, THE COURT SHOULD GIVE STRONG CONSIDERATION TO COMBINING THE PRESCREENING EXAMINATION AND THE EXAMINATION CONDUCTED BY THE COURT EXPERT, THEREBY ELIMINATING THE REQUIREMENT OF ONE OF THESE EXAMINATIONS.

RECOMMENDATION: EXAMINERS SHOULD BE REQUIRED TO COMPLETE THEIR EXAMINATION SUFFICIENTLY IN ADVANCE OF JUDICIAL HEARINGS TO ALLOW COUNSEL ADEQUATE TIME TO CONSIDER THE RESULTS OF THE EXAMINATION IN PREPARING THE CASE FOR JUDICIAL HEARING.

RECOMMENDATION: THE COURTS SHOULD URGE EXAMINERS TO TAKE TIME AND CARE TO EXPLAIN TO EVERY RESPONDENT THE NATURE AND PURPOSE OF THE EXAMINATION, ITS PLACE IN

THE COMMITMENT PROCESS, AND THE LIKELY CONSEQUENCES OF THE EXAMINATION.

RECOMMENDATION: EXAMINERS WHO PREPARE WRITTEN CERTIFICATES OR REPORTS SHOULD BE REQUIRED TO INCLUDE IN THOSE REPORTS STATEMENTS INDICATING WHAT PSYCHIATRIC RECORDS AND OTHER EXAMINERS' OPINIONS THEY CONSULTED BEFORE EXAMINING THE RESPONDENT AND PREPARING THEIR CERTIFICATES AND REPORTS. THEY SHOULD INDICATE, IF POSSIBLE, WHICH OF THEIR CONCLUSIONS DEPENDS SUBSTANTIALLY ON THEIR OWN OBSERVATIONS AND THOSE WHICH PRIMARILY ECHO OR REINFORCE PRIOR CONCLUSIONS MADE BY OTHERS.

Notwithstanding the difficult issues of chronically ill persons who are in and out of the "revolving door" of the hospital and the related difficulty of deciding whether a respondent possesses the mental capacity to decide to become a voluntary patient, the procedure of allowing respondents to request voluntary status in the hospital is a definite strength in the Columbus system. It makes it possible for respondents to avoid the stigma of involuntary commitment and prevent the record of a commitment hearing from becoming part of the public record. Further, it seems in the interest of economy to have the majority of respondents enter the mental health system on a voluntary basis, thereby eliminating the need for judicial resources and attorneys.

Two recommendations are made below which may alleviate, but not eliminate, the "revolving door" problem caused by the repeated three-day letter requests for voluntary admissions, and the problem of ascertaining the willingness and competency of respondents to elect voluntary admissions.

RECOMMENDATION: ATTORNEYS FOR RESPONDENTS SHOULD BE ENCOURAGED TO ASCERTAIN AND DETERMINE TO THEIR SATISFACTION THAT RESPONDENTS WHO HAVE APPLIED FOR VOLUNTARY ADMISSION TO THE HOSPITAL HAVE DONE SO WILLINGLY AND WITH SOME UNDERSTANDING.

RECOMMENDATION: ONLY ONE THREE-DAY LETTER REQUESTING RELEASE, FOLLOWING A CONVERSION FROM INVOLUNTARY HOSPITALIZATION TO VOLUNTARY HOSPITALIZATION MAY BE FILED BEFORE A JUDICIAL HEARING, AND ONE EACH BETWEEN ADJUDICATION OF INVOLUNTARY CIVIL COMMITMENT AT A FULL HEARING AND SUBSEQUENT REHEARINGS.

The broad powers to release a respondent, in effect at any time, is clearly a strength in the Columbus involuntary civil commitment system from the standpoint of safeguarding against improper hospitalization. On the other hand, one could argue that if prehearing procedures were conducted properly--i.e., filing of an affidavit, screening, investigation, and ex parte judicial review--the immediate release of a person once he has been taken into custody and transported to the hospital seems senseless, at least from the standpoint of economy and efficiency. As the legal and mental health communities become less



concerned with improper compulsory hospitalization and more concerned with the premature release of persons from the hospital who may have no treatment alternatives, discharge and release policies may have to be reviewed. Bed space, resource allocation, and other fiscal concerns may become paramount, if they are not already so.

RECOMMENDATION: HOSPITAL FACILITIES SHOULD BE ENCOURAGED BY THE COURT TO COMMUNICATE CLEARLY TO THE COURT THEIR PREHEARING DISCHARGE POLICIES.

RECOMMENDATION: THE COURT SHOULD PREPARE ITSELF FOR A CHANGE IN PUBLIC SENTIMENT AND CHANGES IN THE LEGAL AND MENTAL HEALTH CULTURE DEMANDING A SHIFT IN ADVOCACY FROM THE RESPONDENT TO THE AFFIANT.

### Counsel

The provision and prompt availability of legal representation for persons involuntarily hospitalized in Columbus is a strength in the commitment process, protecting the respondent from wrongful hospitalization for more than a few days. As a group, court appointed attorneys in Columbus advocate conscientiously, at least initially, for respondents' expressed wishes. Given the extensive pre-screening and diversion of persons for whom compulsory hospitalization is deemed inappropriate, attorneys in Columbus have assumed roles and attitudes in their representation of respondents that appears effective, though not without room for improvement.

The short period of time available for preparation of a case before a probable cause hearing balances the respondent's right to a quick judicial review and his or her counsel's needs in the preparation of a competent defense. On short notice, access to information relevant to the case is often unavailable to attorneys. Yet, no charges of gross inadequacies of legal counsel provided to respondents were encountered in our study. With minor adjustments and improvements, legal assistance provided to respondents in commitment in Columbus seems deserving of praise, in our opinion.

Although the vast majority of courts throughout the country recognize a constitutional right to counsel in involuntary civil commitment proceedings, the Ohio law is laudable by guaranteeing this right to its citizens. As a group, attorneys for respondents in Columbus seem to have found a comfortable middle ground in their roles somewhere between the extremes of guardian ad litem and zealous advocate. The system works smoothly; we encountered no indications that the role assumed by the attorneys engendered even isolated cases of improper compulsory hospitalization. We found the attorneys' doubt about and questioning of their own roles in the commitment process to be a healthy attitude.

Without exception, attorneys in Columbus seem to assume the role of advocate for release of the respondent in the initial stages of the proceedings. That is, in the absence of contrary information they assume that immediate release of the respondent is the desired goal toward which

their representation is aimed. With increased information about a case, however, they may relax their advocacy, as in a case, for example, in which the independent examiner is of the opinion that the respondent is in definite need of immediate compulsory hospitalization. Given that the Columbus system includes an active screening and diversion of respondents before a judicial hearing and a strong adversarial process thereafter, this seemingly prevailing role of strong-advocate-first, then guardian-advisor-later may be the best possible role for attorneys in Columbus.

RECOMMENDATION: THE COURT IS ENCOURAGED TO COMMUNICATE,  
WITH THE ADVICE OF THE LEGAL AND MENTAL HEALTH  
COMMUNITIES, THE PREFERRED ROLE FOR RESPONDENT'S  
COUNSEL, ESPECIALLY TO NEWLY APPOINTED ATTORNEYS.

The methods of appointment and retention of counsel to represent respondents in involuntary civil commitment proceedings in Columbus are effective. The court-appointed attorneys generally are a conscientious and informed group who provide competent legal representation to respondents. The promptness of appointment of counsel, allowing for a timely (although admittedly short) preparation for a defense, is a significant strength in the Columbus civil commitment process. Finally, fee schedules for attorneys appear reasonable and fair given the (1) rotating basis of appointment, (2) the fact that the great majority of respondents are located in one place (Central Ohio Psychiatric Hospital) allowing attorneys expedient access to their clients, (3) the fact that hearings are scheduled reliably on specific predetermined dates, and (4) that several cases are heard at once.

Although the method of appointing attorneys to represent respondents has proved effective in Columbus, the success of the method depends largely upon the individual entrusted with the responsibility of selecting attorneys for court appointment, namely the Franklin County Probate Judge. The following two recommendations concern review of the appointment methods and their results.

RECOMMENDATION: THE PROBATE COURT IS ENCOURAGED TO  
ASSEMBLE A COMMITTEE OF REPRESENTATIVES FROM THE LOCAL  
BAR AND MENTAL HEALTH COMMUNITY TO REVIEW AND PROVIDE  
ADVICE ABOUT THE APPOINTMENT OF ATTORNEYS TO REPRESENT  
RESPONDENTS IN INVOLUNTARY CIVIL COMMITMENT  
PROCEEDINGS.

RECOMMENDATION: THE REVIEW COMMITTEE SHOULD PERIODICALLY  
MONITOR THE LIST OF COURT APPOINTED ATTORNEYS AND  
ASSIST THE PROBATE COURT IN EVALUATING COMPLAINTS OF  
INCOMPETENCE AGAINST ATTORNEYS ON THE LIST AND IN  
DEVELOPING GUIDELINES FOR THE REMOVAL OF ATTORNEYS  
FROM THE LIST.

Compared to the legal representation provided to respondents in other jurisdictions, and in consideration of the small amount of time available for preparation of cases before judicial hearing, legal counsel

of respondents in Columbus, in our opinion, ranges from satisfactory to very good. Based upon our observations of attorneys during hearings and interviews, it appears that the court-appointed attorneys go about their duties and responsibilities conscientiously. A strength in the representation of respondents in Columbus is the practice of interviewing respondents before the Probable Cause Hearing, whenever possible. Due in part to the short period of time available to attorneys to prepare their cases, however, a weakness in the system is the inability and failure of attorneys to avail themselves of valuable information from pre-screeners, court and independent experts, hospital staff, and other potential witnesses.

RECOMMENDATION: THE RESULTS OF THE PRE-SCREENING INVESTIGATION AND MENTAL HEALTH EXAMINATIONS SHOULD BE PROVIDED TO RESPONDENT'S COUNSEL ALONG WITH A COPY OF THE AFFIDAVIT, AND OTHERWISE BE MADE READILY ACCESSIBLE TO COUNSEL IF NOT PRESENTED TO HIM OR HER IN WRITING.

RECOMMENDATION: WRITTEN STATEMENTS DESCRIBING THE RESULTS OF THE MENTAL HEALTH EXAMINATIONS CONDUCTED BY THE COURT AND INDEPENDENT EXPERTS SHOULD BE MADE AVAILABLE ROUTINELY TO THE RESPONDENT'S COUNSEL AND THE STATE'S ATTORNEY. ALTERNATIVELY, THE PROBATE COURT SHOULD REQUIRE THAT INDEPENDENT AND COURT EXAMINERS COMMUNICATE THE RESULTS OF EXAMINATIONS BY TELEPHONE AT LEAST 24 HOURS BEFORE HEARINGS.

RECOMMENDATION: CENTRAL OHIO PSYCHIATRIC HOSPITAL AND THE PRIVATE HOSIPTALS IN COLUMBUS SHOULD BE ENCOURAGED BY THE PROBATE COURT TO MAKE CONSISTENT THEIR POLICIES REGARDING RESPONDENT'S COUNSEL'S ACCESS TO RELEVANT HOSPITAL RECORDS.

RECOMMENDATION: GIVEN THE INFREQUENT INVOLVEMENT OF COURT-APPOINTED ATTORNEYS IN APPEALS OF INVOLUNTARY CIVIL COMMITMENTS, AND THE OTHERWISE FEW OPPORTUNITIES FOR ATTORNEYS IN COLUMBUS TO REVIEW THE LEGAL AND SOCIAL CONSEQUENCES OF THEIR REPRESENTATION IN COLUMBUS, A CONTINUING EDUCATION PROGRAM FOR COURT-APPOINTED ATTORNEYS SHOULD BE INSTITUTED AND IMPLEMENTED.

### Hearings

Ohio law provides the individual sought to be involuntarily committed with opportunities to test the allegation in the affidavit and the validity of protracted compulsory hospitalization in three separate Probate Court hearings: probable cause, full, and continued commitment hearings. Probable cause hearings are held only upon request of the respondent or his or her counsel (5122.141); however, they are held automatically three days after the filing of an affidavit as a matter of practice in Columbus. Probable cause hearings tend to be less formal than full hearings, and Ohio's Rules of Civil Procedure are not strictly

adhered to in probable cause hearings as a matter of law (5122.141, 5122.06). Also, the burden of proof in these initial judicial hearings is "probable cause," instead of the "clear and convincing" evidence required at the full hearings. Representation of the State's case during probable cause hearings need not be by an attorney according to Ohio law (5122.06), and, in Columbus, is usually a hospital social worker. Otherwise, as one attorney put it, the probable cause hearings in Columbus are "carbon copies" of the full hearings.

Full hearings are conducted in a manner consistent with due process of law and the Ohio Rules of Civil Procedure (5122.15). Full hearings must be held sometime between the thirtieth and forty-fifth day after the initial detention of the respondent unless a probable cause hearing was held in this period of time, in which case full hearings must be held within ten days from the probable cause hearing (5122.141). The rule of practice in Columbus is for full hearings to be held within ten days of the probable cause hearing, which always is held within three days of the filing of an affidavit. Continuances are infrequent.

If there has been no disposition of the case after ninety days of involuntary civil commitment of the respondent, either by discharge or a conversion to voluntary hospitalization, a judicial review hearing of continued commitment is held as a matter of law and practice in Columbus (5122.15). If the outcome of the review hearing is continued commitment, review hearings are mandatory every two years thereafter or they may be requested by a respondent every 180 days (5122.15). Only the probable cause hearing and the full hearing will be considered in this chapter. The continued commitment review hearing will be discussed in Chapter VII.

The provision of court hearings conducted in accordance with due process of law and the Rules of Civil Procedure is a very significant feature of the Columbus civil commitment system. The actors in the system appear to function fairly, effectively, and efficiently within that system. In our opinion, the Probate Court deserves praise for erecting in practice the procedural and substantive safeguards in Ohio law to protect respondents during hearings. If the system has significant deficiencies, they are due to emphasis of safeguards for the respondent to the detriment of economy and efficiency. Most of our recommendations for improvements are aimed at balancing the interest of the respondent in adequate judicial review and the interest of efficiency and economy.

The vast majority of those we interviewed in Columbus felt that the practice in Franklin County of providing automatic probable cause hearings to all respondents in involuntary civil commitment proceedings did not sufficiently serve the liberty interests of respondents to outweigh the interests of efficiency and economy. With a change in the timing of the full hearing, a strengthening of the prescreening procedures, a meaningful investigation and review of the affidavit, and an allowance for the expungement of records upon dismissal of the case at full hearing, the automatic conduct of a probable cause hearing in every commitment case is unwarranted.

RECOMMENDATION: THE PRACTICE OF PROVIDING AUTOMATIC PROBABLE CAUSE HEARINGS IN FRANKLIN COUNTY SHOULD BE ELIMINATED.

RECOMMENDATION: FULL HEARINGS IN INVOLUNTARY CIVIL COMMITMENT PROCEEDINGS IN FRANKLIN COUNTY SHOULD BE HELD WITHIN FIVE DAYS OF THE FILING OF AN AFFIDAVIT.

RECOMMENDATION: PROCEDURES FOR PRESCREENING AND DIVERSION BY THE COMMUNITY MENTAL HEALTH CENTERS, INVESTIGATION OF THE AFFIDAVIT, REVIEW BY, AND THE EX PARTE DETERMINATION OF PROBABLE CAUSE BY THE REFEREE SHOULD BE ENHANCED AND STRENGTHENED.

RECOMMENDATION: THE EXPUNGEMENT OF ALL RECORDS OF INVOLUNTARY CIVIL COMMITMENT PROCEEDINGS SHOULD BE MADE POSSIBLE, UPON ORDER OF THE COURT, WHEN A RESPONDENT IS DISCHARGED AT A FULL HEARING.

The timeliness, adversarial nature, and strict adherence to due process of law and the Rules of Civil Procedure are very strong features of the law and practice of the involuntary civil commitment in Columbus. The use of rules of evidence in civil procedure ensure that the hearings will be held in an orderly fashion and that the rights of respondents will be carefully protected. The considerations for improvements of the nature and conduct of full hearings in Columbus suggested below should not detract from our judgment that the manner in which hearings are conducted in Columbus is exemplary.

RECOMMENDATION: THE PROBATE COURT SHOULD SEEK FUNDS TO RENOVATE THE COURTROOM IN CENTRAL OHIO PSYCHIATRIC HOSPITAL.

RECOMMENDATION: REFEREES ARE ENCOURAGED TO BE CONTINUALLY VIGILANT ABOUT MAINTAINING COURTROOM DECORUM.

RECOMMENDATION: THE PROBATE COURT SHOULD ENCOURAGE A CLOSE TRACKING OF STATUTORY CRITERIA AND REQUIREMENTS DURING THE HEARINGS.

RECOMMENDATION: THE PROBATE COURT, IN COLLABORATION WITH THE COMMUNITY MENTAL HEALTH SYSTEM IN COLUMBUS, SHOULD DEVELOP AND KEEP CURRENT INFORMATION ABOUT PROGRAMS IN THE COMMUNITY THAT MIGHT BE APPROPRIATE AND AVAILABLE AS LESS RESTRICTIVE ALTERNATIVES TO INVOLUNTARY COMMITMENT. IT SHOULD BE THE RESPONSIBILITY OF THE RESPONDENT'S COUNSEL AND THE PROBATE COURT TO BE FAMILIAR WITH THIS INFORMATION AND USE IT TO IDENTIFY THE LEAST RESTRICTIVE TREATMENT OPTION THAT IS APPROPRIATE AND AVAILABLE FOR RESPONDENTS.

RECOMMENDATION: MORE ATTENTION TO AND CONSIDERATION OF TREATMENT PLANS AND LESS RESTRICTIVE TREATMENT ALTERNATIVES TO FORCED HOSPITALIZATION SHOULD BE GIVEN

DURING INVOLUNTARY CIVIL COMMITMENT HEARINGS IN  
COLUMBUS.

A significant strength of the involuntary civil commitment system in Columbus is the conduct of adversarial hearings. The roles of the referee, state's attorney, examiners and other witnesses in the proceedings are generally well executed within this adversarial framework. Also, from the point of view of legal protections, the respondent's presence at hearings in Columbus is a strong feature. Respondents have the opportunity to hear all allegations made about them and are able to assist in their defense to the maximum extent possible. Additionally, the referee always is able to observe the respondent and need not rely solely on the testimony of witnesses and the statements from counsel about the mental condition of the respondent. On the other hand, it can be argued that respondents may suffer emotional and mental damage by the experience of listening to relatives, friends, and doctors testifying about them. Families fear that respondents' relationship with them will suffer as a result of the courtroom experience. Also, as noted earlier, treating physicians believe that their testimony in the presence of the respondent can significantly interfere with their ability to establish a therapeutic relationship with him or her. On balance, however, it is our judgment that the presence of the respondent at hearings, given his or her counsel's good advice, tends to be a mark in favor of the Columbus system.

The assignment of several referees to civil commitment cases on a rotating basis is also a praiseworthy feature of the city's commitment system. Our interviews with several of the referees and our observations of them during hearings revealed a remarkably competent, conscientious, and fair-minded group of attorneys. They all appear to approach their part-time job presiding at involuntary civil commitment proceedings with thoughtfulness, intelligence, and enthusiasm.

The following recommendation regarding the State Attorney's function in hearings is made to coincide with earlier recommendations for the abolition of the Probable Cause hearings.

RECOMMENDATION: AN ATTORNEY, DESIGNATED BY THE STATE'S  
ATTORNEY, SHOULD REPRESENT THE STATE IN ALL CIVIL  
COMMITMENT PROCEEDINGS.

In our opinion, given the adversarial nature of the civil commitment proceedings in Columbus, a social worker representing the case for hospitalization at a probable cause hearing is an anomaly that detracts from the strength of the Columbus system--namely, the adversarial nature of the proceedings. Insofar as the social worker serves the role of an ersatz attorney, both the appearance and conduct of the hearing are less than adversarial. In our opinion, the aims of economy or informality, if those were the aims of inserting a social worker into the proceedings, are better achieved in other ways.

Judicial Considerations After the Hearing

The courts' concern for individuals involuntarily confined to mental health facilities does not end with judicial commitment hearings.

Except for requests for the expungment of all records of the proceedings, for those respondents whose cases are dismissed at the completion of the judicial hearing, the courts' involvement ceases. For those respondents who are involuntarily committed, however, the court continues to be involved in reviewing contested commitments in mandatory periodic hearings, appeal from a commitment order, petitions for writs of habeas corpus, and review of institutional practices, especially questions concerning patients' rights.

Mandatory review hearings conducted in accordance with due process of law are a positive feature of the Columbus involuntary civil commitment system. However, given the rarity of appeals from a commitment order, petitions for writs of habeas corpus, and other legal remedies, the lack of judicial review and oversight is, arguably, a weakness in the system.

From the standpoint of economy and efficiency, the discharge of respondents' attorneys from responsibilities in continued representation of cases following the judicial hearing may have considerable merit. From the standpoint of protection of the respondents' rights, however, this procedure can be criticized for, at the least, causing a discontinuity in a respondent's legal representation in civil commitment proceedings, and, at the worst, placing the respondent at a distinct disadvantage in seeking legal remedies for protracted commitment. One solution to the problem, of course, is to require that respondents' attorneys remain responsible for a respondent's legal representation during the commitment period. However, this requirement may prove cumbersome from an administrative point of view. Further, in other jurisdictions (e.g., parts of North Carolina) where such continued representation is a matter of law, compliance is minimal, i.e., counsel never maintain contact with their clients after commitment. However, the practice whereby an attorney is discharged from his or her responsibility to a respondent upon completion of the hearing and the respondent literally leaves the courtroom not to see that attorney again is, in our opinion, an anomaly in an otherwise strong system.

RECOMMENDATION: UPON THE COMPLETION OF A JUDICIAL HEARING AND A FINAL ORDER OF COMMITMENT, COUNSEL FOR THE RESPONDENT SHOULD NOT BE DISCHARGED FROM RESPONSIBILITIES FOR RESPONDENT'S REPRESENTATION UNTIL ALL AVAILABLE REMEDIES AND OPTIONS FOR RELEASE OR LESS RESTRICTIVE ALTERNATIVES ARE CLEARLY AND CAREFULLY EXPLAINED TO THE RESPONDENT. FURTHER, COUNSEL FOR THE RESPONDENT SHOULD NOT BE RELEASED FROM HIS OR HER RESPONSIBILITIES FOR THE RESPONDENT'S REPRESENTATION UNTIL HE OR SHE HAS PERSONALLY COMMUNICATED THE PARTICULARS OF THE CASE TO THE OHIO LEGAL RIGHTS SERVICE AND THE HOSPITAL ADVOCATE.

RECOMMENDATION: A DETAILED WRITTEN REPORT, AS REQUIRED IN SECTION 5122.15(H) OF THE REVISED CODE, SHOULD BE FILED BY THE HOSPITAL AND MADE AVAILABLE TO THE RESPONDENT'S COUNSEL AT LEAST THREE DAYS BEFORE A

REVIEW HEARING. FURTHER, RESPONDENT'S COUNSEL SHOULD BE ENCOURAGED TO SUBPOENA MEMBERS OF THE TREATMENT TEAM TO TESTIFY AT REVIEW HEARINGS.

RECOMMENDATION: THE PROBATE COURT IS ENCOURAGED TO DEVELOP ONE OR MORE TRAINING SESSIONS FOR REFEREES AND ATTORNEYS ON THE RIGHT TO AND PROCEDURES FOR APPEAL OF COMMITMENT ORDERS. THE PROBATE COURT IS FURTHER ENCOURAGED TO SEEK THE ASSISTANCE OF THE OHIO LEGAL RIGHTS SERVICE IN DEVELOPING AND COORDINATING THESE TRAINING SESSIONS.



## CHAPTER I

### INTRODUCTION

#### A. OVERVIEW OF REPORT

This report is based on a study of the process of involuntary civil commitment in Columbus, Ohio. It is introduced in this chapter by an explanation of how the study was done, what its limitations are, and how certain terms are used in this report. That explanation is followed by a summary of the procedures in the commitment system as they existed in Columbus at this writing.

#### The Nature of the Study

This descriptive analysis of the practice and law for treating the mentally ill in Columbus focuses primarily on involuntary hospitalization and treatment. The bases for the analysis are the Ohio statute and relevant case law, professional literature in law and mental health, and, especially, interviews with people who work in this system and observations of the system at work.

Many references are made to Ohio's involuntary commitment statute, Ohio Rev. Code Ann. Section 5122 (see Appendix B). But this report is not intended as a law review. It is aimed primarily at an audience of practitioners--judges, referees, attorneys, court employees, mental health personnel and others involved in the involuntary civil commitment process in Ohio. Conclusions and recommendations contained in the report are directed at court action, not legal tactics for defense attorneys or legal reform. Reference is made to statute to help explain why and how the system works as it does in Chicago. Interpretations of statute presented in this report should not be taken as authoritative, whether presented as the interpretations of these researchers or of people in the field.

Neither is this report to be taken as a scholarly analysis of issues in mental health and the law. It contains no citations to professional literature, although an enormous literature exists that is relevant to this work. Scholarly works abound on mental health law and civil commitments, including some produced by the staff of this project. To cite professional literature as it relates to the manifold aspects of this report would have been an enormous task and would have increased the bulk of this report significantly. We thus chose not to cite these works, leaving scholarly analyses to other reports. Our obvious debt to the scholarly work of others in this field is readily acknowledged, however, and will be easy to identify in the pages that follow. We make no pretense that the philosophical and technical ideas raised in this volume are original, and we apologize in advance to the numerous authors to whom we fail to give direct credit.

Then what is this report? This report describes how informed people, who work with civil commitment in the City of Columbus, perceive the system to work and how we perceived it during our field work. It is a report of what those involved in the system do, what they feel about it, and what they have suggested about other ways it might be done.

While we do not claim to present authoritative knowledge either about the law or scholarly thought in this area, we do claim to be presenting an accurate and representative report of the opinions and practices of the people who are central to the Columbus system for civil commitment.

All that we know about the system is what we have been told by the people in Columbus, supplemented by the professional literature and a limited number of personal observations of practice in Columbus. When it is reported that certain events occur in Columbus, it should be understood that this means we were told that those events occur, or that we observed them occur. If specific sources of information are not cited, it can be assumed that this information was reported to these researchers by virtually all those who were interviewed and observed. If information came only from certain sources, or if it differed from information from other sources, then the specific source of the information is reported. All sources are reported as generic categories of people, such as referees, attorneys, mental health professionals, and so on. Specific names are not used. We have attempted to maintain confidentiality of the information that was provided to us. Names were removed from all data so that particular individuals could not be associated unambiguously with particular bits of information provided to us.

Appendix C is a copy of the data-collection guides used to collect information in Columbus. Also included in those materials is a statement of research ethics and confidentiality, which directed this work. A complete set of field notes, with names of people removed, can be obtained from the National Center for State Courts.

This report is organized roughly chronologically, proceeding from prehearing matters, through the hearing, to posthearing matters. A separate section concerns the respondent's counsel, who usually comes into the picture after a person has been taken into custody but before a hearing. This organization also is followed, more or less, in the statutory analysis contained in Appendix B. While another means of organizing these materials might arguably have been more effective, this general organization scheme is used in order to provide maximum comparability between this report and companion volumes describing involuntary civil commitment in other cities.

The report and its recommendations have been reviewed by many people in Columbus. Nevertheless, the final responsibility for its contents rests with the staff of this project. The Acknowledgments (pp. vii-x) identify individuals who served this project in the capacity of advisors and data sources. Either through interviews or our observations of their activities, they are the source of all our practical knowledge about the Columbus system. They also were given the opportunity to review the report before its final release, to detect and correct errors, and to suggest revisions in the recommendations. No topic of this complexity can generate a perfect unanimity of opinion, however. Differences in perceptions are acknowledged as much as possible. When conclusions or recommendations had to be fixed in one direction or another, though, the final decisions were made by project staff and it is they who must be accountable for whatever degree of wisdom or folly was thereby created.

### Limitations and Focus of this Report

Every research effort has its limitations. Those reflected in this report are acknowledged in order that the conclusions in the report are not generalized to situations to which they do not apply.

This report applies only to the process of civil commitment in Franklin County, Ohio and primarily the City of Columbus. It is not meant to apply to any other parts of the State of Ohio. Some parts of the information certainly will generalize beyond the City; but generalizations to other areas must be made by the reader as fortuitous and serendipitous offshoots of this work, not as the intention of these researchers. Other products coming from this research project will establish some general guidelines that might be applied nationwide.

The data for this report were gathered primarily during October 1981. The final report was released in "review draft" form in February, 1982. The report is accurate as of that time. In performing policy analysis and making recommendations for change, one implicitly hopes that the report soon will be out of date. It seems that the longer a situation remains unchanged, the longer the report remains accurate and the greater the evidence that it had no impact.

The report relates only to allegedly or actually mentally ill adults of Columbus who are in the civil system of law. It is not meant to be accurate with reference to prisoners, minors, mentally retarded or developmentally disabled persons, or "sexual offenders" who are alleged to be mentally ill. Some of this report has obvious relevance to these special populations of people. Those populations also are subject to special considerations, however, that seriously qualify this report's applicability to them.

### Perspective

It is impossible to consider the system for the involuntary treatment of the mentally ill without getting caught up in differences of opinion and conflicting attitudes about mental illness and society's proper response and responsibility. A mental health system will be appreciated to the extent that it can accomplish two fundamental objectives. Some people value a system that can provide easily for the treatment of mentally ill individuals because of the obvious need and society's responsibility to respond to the need, even if treatment must be coerced. Other people, though, value a mental health system to the extent that it can protect individuals from hospitalization or treatment being thrust upon them involuntarily. For ease of reference, we will refer to the first of these perspectives as the "helping attitude" and the second of these as the "liberty attitude."

This report will attempt to represent the helping attitude and the liberty attitude in equal strength. It is safe to say, however, that most people tend to favor one or the other more strongly. Equally true, the attitude that prevails is influenced strongly by the circumstances inherent in any particular mental health case.

Some people hold these attitudes in the extreme. Those who are strongly biased toward the helping attitude may contend that mental illness is, per se, sufficient reason to treat an individual against his or her will because that person's capacity for voluntary and intelligent decisionmaking is necessarily impaired. This is not to say that people who subscribe firmly to the helping attitude propound the elimination of all individual rights, however. They may maintain a strong orientation toward respecting patients, minimizing unnecessary restrictions, providing humane and adequate care, and so on. On the other extreme, those who hold the liberty attitude may contend that mental illness really does not exist. They view people as having wide ranges of behavior to which society must accommodate without interference. Such people, however, agree that behavior harmful to others is obviously cause for concern; but they argue it should be handled through the criminal, rather than the civil, justice system.

Try as one may to balance the helping attitude and the liberty attitude, many situations arise in civil commitment procedures that bring these two attitudes into sharp conflict. While the objectives of helping people and protecting freedom are not necessarily contradictory, decision points arise where the two attitudes may compel contradictory ways to proceed. Differences in opinion about what decisions may be "good" or "bad," "right" or "wrong," stem from a fundamental disagreement about system objectives as seen in the context of the two contrasting points of view. Disagreements about the value of a civil commitment system frequently can be understood by reference to these differing attitudinal perspectives. The best system will find ways to accommodate both interests; but conflicts between them are admittedly impossible to avoid and occasionally will force a choice between one or the other.

Consistent with the National Center for State Court's functioning as an extension of the state court systems, i.e., working on their behalf and responsive to their priorities, the Institute has taken on amicus curiae, library resource, and technical assistance roles vis-a-vis the courts and their allied agencies (e.g., court clinics, public defender offices, mental health centers, law enforcement agencies, diversion programs, probation and parole departments, community corrections programs, etc.). Our perspective is probably close to that of the courts that are faced with difficult practical problems. We do not argue that this perspective is necessarily neutral, but do feel very strongly that the emphasis is squarely on the improvement of everyday practices in the entire involuntary civil commitment system, practices which are often incongruent with state statutes and mental health-law theory, and practices that must, in our view, reflect the best intents of existing law.

The commitment of an individual to an institution against his or her will is an event that brings into conflict some of our most strongly held values. Our aim in conducting studies of involuntary civil commitment procedures throughout the country is to look objectively at the specific procedures of involuntary civil commitment and help the courts and allied agencies strike an all-important and very difficult balance. This balancing act is nothing new to courts, but it involves weighing (1) the private, individual interests (e.g., liberty) that are

affected by a particular procedure or official action; (2) the community's interest in the treatment of allegedly helpless and mentally disturbed individuals; (3) the community's interest in protecting itself from those persons thought to be dangerous; and, (4) increasingly in these days of an austere economy and strained state resources, the interests of the court in not imposing undue fiscal and administrative burdens on the mental health-justice system. The judge, in the courtroom as the trier of fact, and outside of the courtroom as the administrator of a unit within a complex interorganizational network comprising the mental health-justice system, must make decisions within the context of (1) an ever-shifting array of legal requirements, (2) resource allocations which come from different sources than the justice system, and, (3) a clientele that comes from a part of this interorganizational network governed by regulations, policies, and resources which overlap with and differ from those of the court. Although we clearly look at other "actors" in the involuntary civil commitment system, our emphasis is clearly on the judge and on court action as it affects the entire involuntary civil commitment process.

In the final analysis, the decision between liberty and state intervention in the lives of allegedly mentally disturbed persons may be based more on values and morals than on facts and logic, and entail judgments that probably need to be made by the public and legislators. Unfortunately, those people in the mental health-justice system charged with the responsibility of deciding between forced hospitalization and freedom in individual cases do not have the luxury of waiting for such ultimate judgments to be made. Decisions are being made today and will continue to be made even in the absence of final judgments about the state's justification for coercive hospitalization, right to treatment, right to refuse treatment, prompt judicial review of initial detainment, etc. Our aim is to help those individuals who must make these difficult decisions everyday. In brief, ours is a perspective that tends to shy from ultimate questions, preferring instead to focus on everyday practice; it emphasizes court action that necessarily needs to strike a balance between competing interests; and, finally, it is one that probably reflects a little bit of impatience with ultimate questions. As one philosopher has quipped, philosophic problems are raised, and philosophic speculation seems to be abundant at times which do not possess the logical and practical means to solve those problems.

#### Terminology

Some terms that deserve special comment are used throughout this report. These comments are noted here and will not be repeated as the terms are used.

The most important term is the word "commitment" and its various forms and derivatives. The current vogue is not to use this word because of its strong negative connotations. In its place, most people are using the term "hospitalization." We have chosen, though, to use "commitment" in this report for two reasons. First, it is a term that is commonly used in speech, readily recognized, and well understood. Second, in Ohio and several other states, commitment and hospitalization are not synonymous. Hospitalization is merely one form that an order of

commitment may take. Commitment is more nearly synonymous with "court-ordered treatment," but this is not accurate either in a system such as Ohio's in which a patient, though committed, still retains the right to refuse treatment. While the term "court-ordered" might be a good substitute term for "committed" in Ohio, statutes in other states make it possible for people to be committed without the involvement of a court. Thus, the search for a synonym is frustrated and the choice is made to use the word "commitment" despite the stigma that has been associated with it. Perhaps the ultimate solution to this problem will be reform of civil commitment law and mental health practices, and subsequent re-education of the public, so that the stigma, not the word, eventually disappears.

Two other words used in this report are "respondent" and "patient." These words are essentially synonymous for purposes of this report. Technically, a patient is a person who has been admitted for mental health treatment, with or without a court commitment, either as an inpatient or outpatient. (Outpatients are more frequently referred to as "clients" by mental health professionals, but they will be called "patients" in this report.) A respondent is a person who is the subject of an involuntary commitment proceeding. Generally, the report refers to the person as "respondent" with regard to legal concerns and before a commitment has been ordered. The person is referred to as a "patient" with regard to treatment concerns and following a commitment or voluntary admission to treatment.

The impersonal pronoun "we" is used not to keep the reader at a distance but to refer accurately to the research team, staff members of the Institute on Mental Disability and the Law, National Center for State Courts who participated in this project. They are listed by name in the Acknowledgments. The project benefited immensely from many hours of sharing knowledge, observations, notes, ideas, and opinions. A result of the sharing process, however, is the impossibility of fixing responsibility for the genesis of any of the accumulated project wisdom to any single individual. The task of primary author for this report fell to Ingo Keilitz, however, and it is he who bears responsibility for its accuracy.

#### B. SUMMARY OF THE FRANKLIN COUNTY (COLUMBUS), OHIO SYSTEM FOR INVOLUNTARY CIVIL COMMITMENT

The Columbus involuntary civil commitment process can be summarized in terms of nine discrete steps, corresponding roughly to a set of chronologically ordered events: (1) initiating the commitment procedures; (2) mental health screening, investigation, and review; (3) filing of an application (affidavit) formally declaring the intention to cause the involuntary hospitalization of a person; (4) custody and temporary hospitalization of the person (respondent) who is the subject of the affidavit; (5) examination of the respondent by two doctors before judicial hearings; (6) a judicial hearing of probable cause for involuntary civil commitment; (7) continued short-term involuntary hospitalization or release; (8) an adversarial court hearing, resulting in either involuntary civil commitment by the Probate Court, election of voluntary hospitalization by the respondent, or release; and, (9) periodic judicial review of the commitment.

## Initiating Involuntary Civil Commitment

A person exhibits what appear to be mental health problems. This event may cause the person to enter the mental health system in Columbus. Of course, many people have mental aberrations to a greater or lesser degree and never seek professional help. The person and those people around him or her may simply choose to cope with the apparent problems. Or, the afflicted person may seek the help of private mental health practitioners, voluntarily admit himself or herself to a private or public psychiatric hospital, or seek help voluntarily from community mental health services in Franklin County. When none of these alternatives is realized, and when those in contact with the person (respondent) feel strongly enough to seek his or her forced hospitalization, the involuntary civil commitment process may be initiated. It necessarily will involve law enforcement and court officials. Ohio law defines mental illness as "a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life" (5122.01). Further, according to Ohio law (Section 5122.01 of the Ohio Revised Code), a respondent is subject to forced hospitalization if he or she is determined to be mentally ill, and:

- o represents a substantial risk of physical harm to himself as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
- o represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior or evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm or other evidence of present dangerousness;
- o represents a substantial and immediate risk of physical impairment or injury to himself as manifested by evidence that he is unable to provide for and is not providing for his basic physical needs because of his mental illness and that appropriate provision for such needs cannot be made immediately available in the community; or,
- o would benefit from treatment in a hospital for his 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 himself.

In Columbus, involuntary civil commitment is initiated by means of either an emergency procedure or a judicially ordered (non-emergency) procedure. In emergency situations, law enforcement or mental health personnel may take a person to a hospital if it is believed that only swift action and immediate hospitalization will prevent physical harm to the respondent or others. At the hospital, the respondent is examined

within 24 hours of arrival. Depending upon whether the hospital staff believe the respondent to be mentally ill and subject to involuntary civil commitment, the respondent is released, elects to become a voluntary patient, or is detained at the hospital for no more than three court days (i.e., weekdays excluding holidays), during which the hospital must file an affidavit for judicial hospitalization.

In non-emergency situations, any person may, (but usually it is a family member of the respondent), contact the Franklin County Probate Court to initiate involuntary civil commitment. An official of the Court, in turn, typically refers the person (affiant) seeking the respondent's hospitalization to a local community mental health center to have the respondent examined. Once the affiant has accomplished this, or fails to persuade the respondent to submit to the examination, he or she goes in person to the "mental illness desk" of the Probate Court to make a written declaration (Affidavit of Mental Illness, see Appendix A) and complete other supporting forms and documents.

#### Mental Health Screening, Investigation, and Review

The great majority of persons for whom forced hospitalization is sought are screened and diverted to less restrictive alternatives by various means. In emergency situations, upon examination of the allegedly mentally ill person, the hospital may choose to release the person, make a referral to community services, or persuade the person to become a voluntary patient, rather than proceed with court-ordered hospitalization.

In non-emergency cases, the Franklin County Probate Court typically provides a number of checks and balances before it will permit an official affidavit to be filed and set the involuntary civil commitment process in motion. First, the Court usually refers the affiant to a psychiatrist, psychologist, or most commonly to a "pre-screener" (a social worker) at one of the community mental health centers in Columbus. These mental health personnel investigate the allegations of the affiant by interviewing both the affiant and the respondent (if possible) and reviewing available records. This procedure screens and diverts the majority of cases to less restrictive treatment or protective services, cases that may otherwise be considered for involuntary civil commitment. Second, the Court requires that the affiant provide a letter in support of the affidavit, from a psychiatrist, psychologist, or a pre-screener certifying that the respondent should be hospitalized against his or her will. With such certification in hand, the affiant proceeds to the Court for filing of the affidavit. Obviously frivolous or unsubstantiated complaints rarely proceed beyond this early stage of the involuntary civil commitment process. Finally, once in the Court for the formal filing of an "Affidavit of Mental Illness" (see Appendix A), the affiant is questioned further by a Deputy Clerk of the Court and is asked to complete several forms in addition to the affidavit. One of three court referees (attorneys at law appointed by the court) reviews all relevant documents and allegations.



### Filing of an Affidavit

The jurisdiction of the Franklin County Probate Court is formally invoked when an Affidavit of Mental Illness (see Appendix A) is filed with the court. Although a person may be involuntarily hospitalized for several days before an affidavit is filed with the Court by means of the emergency procedure described above, the involuntary civil commitment process in Franklin County does not proceed without the filing of an affidavit. In emergency cases, the hospital where the respondent is detained either files the affidavit (i.e., the hospital becomes the affiant) or persuades a family member to do so. As mentioned above, the affidavit must be filed within three days of emergency admission or the person must be released from the hospital.

In non-emergency situations, the affiant appears in person at the Court, submits a mental health practitioner's statement certifying to the respondent's need for court-ordered hospitalization, and, with the assistance of a deputy court clerk, completes the affidavit and several supporting documents. The affiant then swears to the truthfulness of the information given. One of the three court referees examines the documents and, once satisfied that probable cause exists to proceed with court-ordered hospitalization, issues a Temporary Order of Detention (Appendix A), which formally begins the involuntary hospitalization process.

### Custody and Temporary Detention

The Deputy Clerk of the Court conveys the court order of detention to the County Sheriff, who typically dispatches two deputies to locate the respondent and transport him or her to a designated mental health facility (usually Central Ohio Psychiatric Hospital). Upon word from the Sheriff that the respondent has been transported to a hospital, the Deputy Clerk notifies the respondent's family and others who may need to know of the respondent's hospitalization.

### Examination by Two Doctors Before Judicial Hearing

In addition to examinations by hospital physicians or mental health personnel pursuant to the admission policies of the hospital, the respondent is examined by two psychiatrists, appointed by the court to report on the mental condition of the respondent and his or her need for involuntary hospitalization. One psychiatrist (or a licensed clinical psychologist) may be of the respondent's (or counsel's) own choosing. Typically, during testimony at the judicial hearings, one psychiatrist (known as the "court doctor") makes the case for involuntary hospitalization, while the other (called the "independent expert") makes the case for release. Frequently, however, they agree in their diagnoses, and treatment and placement recommendations. Examinations typically are performed shortly before the probable cause hearing, which is held within three days after the filing of the affidavit.

### Probable Cause Hearing

A preliminary hearing is almost always held three days after the filing of the affidavit in a room especially designated for that purpose in the basement of Central Ohio Psychiatric Hospital. In this first hearing the state has the burden of showing probable cause that the respondent is subject to involuntary civil commitment. The respondent is represented by an attorney, who usually has reviewed the case and conferred with the respondent before the hearing. The interests of the State are represented at the probable cause hearing by a hospital social worker designated by the hospital. A Court referee presides over the hearing. The Court doctor, independent expert, affiant, and other witnesses may be called upon to offer testimony relevant to the case and may be subject to cross-examination by the respondent's counsel or the social worker.

Reportedly, in fewer than one in 25 cases, the referee finds no probable cause to proceed with involuntary civil commitment, whereupon the respondent is discharged and all records of the proceedings are expunged. In most cases, the referee finds that there is probable cause that the respondent is mentally ill and subject to involuntary civil commitment, schedules a full judicial hearing of the case within ten days, and orders the continued hospitalization of the respondent until such time.

### Continued Commitment Between Hearings

Judicial hearings are held promptly in Franklin County: the probable cause hearing is held within three days of the filing of an affidavit, and full hearings are held within ten days of the probable cause hearings. In the time between scheduled hearings, a respondent or his or her counsel may seek and obtain release from the hospital if the treatment team determines that the respondent no longer meets the involuntary commitment criteria. The respondent also may be encouraged to become a voluntary patient. The Court doctor, the independent expert, and the respondent's counsel typically confer with the respondent at some time before the full hearing. Judicial appeals, writs of habeas corpus, and escape from the hospital during this time are rare.

### The Full Hearing

An adversarial hearing is conducted within ten days of the filing of an affidavit. According to Ohio law, the hearings are to be conducted in accordance with due process of law and the Ohio Rules of Civil Procedure. Although legislative intention reportedly was otherwise, little distinguishes this full hearing and the probable cause hearing preceding it, except: an attorney, instead of a hospital social worker, represents the State's interests; the State bears a heavier burden of proof to sustain the respondent's continued hospitalization; and all witnesses' testimony must be sworn.

After hearing all testimony, if the referee finds that the State has failed to prove by clear and convincing evidence that the respondent is mentally ill and subject to involuntary hospitalization, he (at this

writing, all the referees are male) discharges the respondent. Alternatively, if the criteria for involuntary hospitalization have been met by clear and convincing evidence, the referee orders involuntary hospitalization, usually at Central Ohio Psychiatric Hospital, for up to ninety days.

#### Continued Involuntary Hospitalization and Periodic Judicial Review

If in the opinion of hospital staff a patient's condition does not sufficiently improve, he or she will remain hospitalized. However, according to Ohio law, a person who is involuntarily hospitalized pursuant to a full judicial hearing is entitled to a judicial review of the need for continued hospitalization 90 days after the original commitment decision; thereafter, review hearings must be held at least every two years. In Franklin County, nine out of ten respondents hospitalized by court order are discharged from the hospital or elect to become voluntary patients before a review hearing takes place. For the minority, at least ten days before the initial 90 day commitment, the hospital or some other affiant must file an application for continued commitment with the Probate Court.

When they occur, the judicial review hearings are almost identical to the full judicial hearing described above. Again, appeals, writs of habeas corpus, and other forms of relief are available, but rarely used. "Unauthorized absences" or escapes by involuntarily hospitalized patients are also relatively infrequent and, if they do occur, they are not vigorously pursued by hospital authorities or the courts unless the escaped patients appear once again as the subject of an affidavit at the beginning of the involuntary civil commitment process.



## CHAPTER II

### STUDY METHODS

This chapter considers the methods used in the first phase of the national project undertaken by this research staff, as well as in the research specific to Columbus.

#### Literature Review

Beginning in January, 1981, the project staff reviewed professional literature on the topic of mental health law, especially that particularly germane to the involuntary civil commitment of allegedly mentally ill adults. The initial period of review lasted for approximately two months, although literature was reviewed continually throughout the initial one-year project period. Source materials were collected from books and journals in the disciplines of law, psychiatry, psychology, social work, sociology, and public policy administration. Professors and mental health practitioners were informed about the project and asked to provide copies of unpublished papers or other hard-to-find articles that would be of value to our work. Members of the project's national advisory board were particularly helpful in locating valuable literature.

Just prior to the meeting of the national advisory board in April, staff prepared an "Issues Paper" summarizing the relevant literature and defining important contemporary issues of civil commitment with which this project was to be concerned. The substantive portion of the "Issues Paper" has been altered slightly and published as "Involuntary Civil Commitment: The Discerning Eye of the Law" (State Court Journal, 1981, 5(4), 5 ff.; available from the National Center for State Courts Publication Department). At their meeting, members of the board helped staff decide what research questions should be explored during site visits and gave advice on field research methods.

#### Statutory Review

A scheme was devised for analyzing statutes governing civil commitment. The scheme was constructed by identifying all the important questions that might be addressed in a commitment statute and then ordering them roughly as they might become relevant in a typical case. The statutory analysis outline and the full analysis of the Ohio statute are appended to this report as Appendix B.

A complete statutory analysis was performed for approximately 20 states, as well as for the model statute prepared by the Mental Health Law Project (published in the July-August 1977 issue of the Mental Disability Law Reporter). The 20 states were those in which the National Center's project had received funding, or states that had been brought to the staff's attention as having statutes that were particularly interesting, innovative, or modern.

After an individual review of all the statutes, a comparative analysis was made. Using the analytical scheme that had been developed, staff compiled all the variations of statutory provisions relating to

each of the analytical categories. This compilation of statutory variations is available from the National Center and formed a basis of the major product of the first phase of the project, Provisional Procedural and Substantive Guidelines for the Involuntary Civil Commitment of Mentally Ill Persons, to be published in May 1982. Based upon this analysis, staff determined where and how state statutes and procedures differed with regard to civil commitment. These points of difference became the focus for field data collection.

In addition to reviewing statutes, staff reviewed important case law. The Mental Disability Law Reporter, law review articles, and statute annotations available for the various states were the major sources for identifying important cases. Where the case law significantly added to or changed the range of variation that had been identified through the statutory analysis, this information was incorporated in the comparative analysis. Particularly thorough analyses of case law were conducted for the five funded project states: Illinois, Ohio, North Carolina, New York, and California.

Project staff also contacted court administrators across the country to obtain any types of administrative regulations that might be of help. Several copies of regulations were received. For all states whose statutes were analyzed, published court rules also were examined. Information gleaned from administrative regulations and court rules was sparse, but it also was included in the statutory analysis as appropriate.

#### Preliminary Site Visit

A preliminary visit was made to four of the funded project sites. Three staff members visited Columbus in June 1981, meeting with judges, referees, court personnel, and mental health professionals.

The preliminary visit served several purposes. First, the participants in the Columbus civil commitment system told staff their perceptions of how the Columbus system worked. They noted problems with the system and peculiarities that set it aside from most others and answered questions about the Ohio statute.

During the preliminary visit, cooperation was pledged for the research project. The people in Columbus (and in the other sites as well) were extremely helpful and cordial. Staff of the courts and the mental health agencies invited the research team to include them in the data collection effort and generously offered their help.

The individuals with whom we met during the preliminary site visit identified the agencies and institutions in Columbus that were involved with the mentally ill and civil commitment. Key people within these organizations were named. Others who were unrelated to major institutions but who were deemed important or knowledgeable in a particular area were also identified.

## Site Visits

Intensive data-collection trips to each of the five funded sites followed the completion of the comparative statutory analysis. Four staff members worked in Columbus for one week in October 1981.

During the two weeks prior to the site visit, intensive preparations were made. Important people at the site, who had been identified during the preliminary site visit, were contacted by telephone and appointments were made for visits the next week. Staff thoroughly reviewed the Ohio statute and case law and identified questions of particular theoretical or practical concern for the Columbus system. Interview guides were mailed to people who were to be interviewed so that they could review the areas of concern in advance and prepare for the interviews if they wished.

Three major activities were undertaken during site visits: interviews, observations, and staff discussions. Most participants were interviewed individually, although some were interviewed in groups. With very few exceptions, all interviews were conducted by two or three staff members. Before each interview, one staff person was assigned the role of "scribe." While the other person attended carefully to substance and led the interview, the scribe's duty was to record all answers. In this manner, one person could attend carefully to what was being said and be sure to investigate thoroughly all important questions; and the other person could be sure that everything that was said was carefully recorded. The people who were interviewed in Columbus are named in the Acknowledgments section at the beginning of this volume. The site visit began with interviews with judges and observations of hearings. The next interviews tended to be with attorneys: referees, state's attorneys, and private attorneys. Middle and later interviews tended to focus more on the mental health community: hospital administrators, mental health professionals, and patient advocates.

Court hearings conducted during the time of the visit were observed. For each site, an observation guide was prepared and studied in advance of the hearings. (The observation guide for Columbus is included in Appendix C.) The project team took notes during the hearings. Notes taken during interviews and court hearings were in rough and "scribbled" form. Each staff person rewrote the notes during the week following the site visit.

The third major activity--discussion and analysis--took place at the end of each day, when staff met to compare notes and impressions about the system. Key concerns were (1) what answers from various sources agreed with each other; (2) what answers from various sources disagreed; and (3) what answers still were missing. On the basis of these discussions, interview assignments for the next day were planned. When staff members were confident of the answers they had received, no further questions were asked on certain topics. When they were uncertain, additional attention was given to these questions in the next interviews.

The people with whom interviews were conducted were not a statistically representative sample in any sense. They were purposively chosen because they were identified as the most well-informed and influential people in Columbus with regard to civil commitment from the perspective of court action (see "Perspective," Chapter I). This was consistent with the project goals; i.e., not to establish what is average or typical, or what the typical person thinks about the process, but to gain insight into how the system works and how it might be made better by the actions of the court and its allied agencies, from the perspectives of people with extraordinary and authoritative abilities to understand and comment on it.

Of course, the purposive sampling of interviewees within a perspective favoring court action (as opposed to the perspective of a public defender, civil libertarian, or involuntary commitment "abolitionist," for example) may have left some perspectives under-represented. Although we did interview ex-patients and patient advocates, we did not, for one example, speak with patients involuntarily hospitalized at the time of our study. We acknowledge that the perspective of the involuntarily hospitalized persons may be one quite different than that of the ex-patients and advocates to whom we spoke in the various sites, and one potentially valuable for improvement of the system (even from our perspective of court action). The close tracking and observation of several cases through the various stages of the commitment process, enriched by the accounts of the patients themselves in a particularly attractive inquiry which we were, unfortunately, unable to reach. Such omissions do not make the present work less valid, but only incomplete--an unfortunate flaw of most social research.

#### The Form of the Data

The ultimate goal for this research project was to generate information through which the civil commitment process could be made to function as well as possible. The purpose of the data collection was to obtain practitioners' opinions, advice, and suggestions about the civil commitment process, particularly as it operates in their own localities. Accordingly, it was appropriate that the research be qualitative, not quantitative. Our main purpose was not to ask how many. The purpose was rather to ask why, how well, and how else. We sought information about what works best and why.

The questions in the data collection guide were open-ended. Multiple-choice types of question were avoided so that interviewees would be free to formulate their own opinions rather than have their thoughts slotted into predetermined categories by the researchers.

The data collection guide (in Appendix C) is a complete set of all the questions that were investigated. The interview guide covers many topics. The complete data collection flows in a more-or-less chronological order, as events occur during a typical commitment process. The questions unavoidably overlap to some degree, but repetition was minimized as much as possible. It should be easy to see that the interview questionnaire was organized in the same basic scheme that was used for the statutory analysis.



Because of the length of the data collection guide, every question was not asked of every interviewee. A subset of questions was presented in each interview to optimize the match of peoples' areas of knowledge with the questions asked. All interviewees were invited, however, to discuss any aspect of the commitment process with which they were familiar or about which they had particular opinions or suggestions. Interviewers were able to (and frequently did) stray from the planned path of questions if it seemed useful and appropriate.

The questionnaire was considered only a data collection guide, not a dictum. Precise language in the questions was not important, and neither was the order in which questions were covered. The guide was simply a reminder of important issues and ideas that needed to be discussed. More concern was given to understanding the answers than to writing them down thoroughly or verbatim.

A complete set of field notes, with all names and personal identifiers removed, is available from the Institute on Mental Disability and the Law. It will be provided upon request for the cost of duplication and mailing.

#### Analysis, Report, and Review

A qualitative content analysis was performed on the data. Interview and observation notes first were reviewed and cross-referenced. Note was made of topics of significance, points of consistent agreement, and points of disagreement.

The statutory analysis scheme was used as a general guide for the analysis of the particular site's civil commitment system. For each topic of concern, the analysis covered the statutory provisions, the actual practice at the site, and commentary about statute and practice.

Three major criteria, consistent with the project's perspective (see "Perspective," Chapter I) were used to evaluate the civil commitment system described in this report: legal protections, provision for treatment, and social benefits. The judgments of how to apply these criteria to elements of law and practice fell to the project team, based upon their knowledge of the literature, observations, discussions with practitioners, and (as our sociologist colleagues are quick to point out) their sociohistorical biographies. The reader is free, of course, to disagree with this analysis and may choose to view the system's strengths and weaknesses differently. As will be discussed, a system characteristic may be simultaneously a strength and a weakness, when viewed from different perspectives.

First among the criteria, concern was given to the extent to which legal protections are provided to everyone in the system. The primary consideration was, of course, with the respondent. But statutes and procedures also can provide important legal protections to other people who become involved, such as doctors, attorneys, and members of respondent's family. Generally, this is an important criterion for those who are most concerned about respondent's liberty; but legal protections encompass more than simply protecting respondent from unnecessary hospitalization (e.g., protecting the right to treatment). One Columbus

court psychiatrist whom we interviewed argued eloquently about the "imbalance between the emphasis on the legal aspects of the judicial placement compared to the issue of quality of care."

The analysis also considered how well a system makes provisions for treatment. Admittedly, we are assuming that a valid need for treatment does exist for some people some of the time, an assumption consistent with the public values reflected in current commitment laws throughout the country. Provisions for treatment should be understood to encompass more than involuntary hospitalization, however; a system might get high marks in this regard by its creative consideration of less restrictive treatment alternatives and the opportunities for voluntary treatment that it provides.

Finally, social benefits, including fiscal factors, were considered. Society in general has a legitimate concern with keeping each of its members safe from harm and contributing productively to the community. Society also is served by minimizing the costs inherent in a civil commitment system, eliminating any unnecessary delays in legal and medical decisionmaking, and avoiding undue burdens on already strained state resources.

These factors are considered equally important in this report, and it is recognized that some system characteristics that score high in one area necessarily will score low in another. It should be noted, too, that we make no claim that this evaluative scheme is either unique or original. Professional literature reveals that these criteria are used commonly in considering commitment systems, as well as by judges in deciding individual commitment cases. The courts are accustomed to the approach of balancing (sometimes conflicting) interests as an approach to analyzing legal problems. (cf. "Perspective," Chapter I).

To complete the analysis, possible ways to change and improve the system were considered. These were written into recommendations at the end of each chapter and summarized in the beginning of this report. The recommendations should not be taken as research conclusions or empirically proven statements of fact. Rather, they are our suggestions, based upon our studies and points of view. The recommendations derive from a variety of sources: suggestions made by people in Columbus; suggestions made by people in other cities; conclusions from the professional literature; and ideas generated by these researchers during the project work. It is impossible to sort out the influence of these various sources in any recommendation, or to report accurately how extensive any person's or group's agreement would be with any single recommendation.

The purpose of presenting recommendations is to highlight certain problems and alert people in Columbus to possible solutions. Although it is easy for us to identify a problem, we do not pretend to hold "The Answer." A more realistic expectation is to present "an answer," however modest and tentative, as a stimulus and starting point for thoughtful consideration by those who know Columbus' system better and are in a position to make appropriate changes.

Site reports were reviewed first by project staff and then sent out as "review drafts." The Columbus report was sent for review by all individuals who had participated in the data collection effort. Everyone receiving a review draft was invited to make suggestions for change and was urged to correct any statements that were factually incorrect. A meeting was held in Columbus in late February, 1982, to review this draft as a group.

These reviews were taken into account in preparing the final report. Several portions of the text were corrected and modified and a number of the recommendations were altered. It should not be inferred, however, that this report or its recommendations have been adopted officially by any individual, group, or organization in Columbus, or that the reviewers and participants had a unanimous concurrence of opinion on all the issues raised in this volume. Thus, although the review comments were incorporated into this report, the text should not be taken as a consensual statement or endorsement from that group.



## CHAPTER III

### PREHEARING MATTERS BEFORE RESPONDENT IS HOSPITALIZED

This chapter describes procedures and events in the Columbus involuntary civil commitment process occurring before a judicial hearing is held and before compulsory hospitalization of the respondent. For many respondents, these initial procedures and events constitute the entire extent of their involvement in the involuntary civil commitment process. That is, many will be screened and diverted from compulsory hospitalization, many will elect to enter a hospital voluntarily once an affidavit for involuntary hospitalization has been filed with the court, and some will be almost immediately discharged from the hospital upon arrival.

#### A. INITIATING INVOLUNTARY CIVIL COMMITMENT

According to Ohio law, the involuntary civil commitment of an individual may be applied for under one of two procedures: emergency hospitalization (5122.10) or judicial hospitalization (5122.11). The emergency hospitalization procedure permits any psychiatrist, licensed clinical psychologist, physician, health or law enforcement officials to take a person to a hospital against his or her will if there is reason to believe that the person meets the legal criteria for compulsory hospitalization (5122.01) and represents a substantial risk to himself, herself or others if allowed to be free. It is important to note that the law only recognizes certain individuals who may initiate involuntary hospitalization and that they must exercise judgment as to whether the person constitutes a risk that warrants emergency actions.

The person transporting the allegedly mentally ill person to the hospital is required to present a written statement to the hospital, indicating the circumstances and reasons for the emergency action. In Columbus, a pre-printed form ("Application for Emergency Admission," or "pink slip") is used for this purpose (see Appendix A). This form is similar to a formal affidavit filed with the Probate Court insofar as it requires that the transporting person to indicate (by checking the appropriate box) the appropriate compulsory hospitalization criteria and make a written statement supporting his or her belief that emergency hospitalization is necessary. Reportedly, these "pink slips" are available to police only after their arrival at the hospital. As a rule, police do not get involved in emergency hospitalization proceedings unless they receive a specific request from another person to intervene or they observe and apprehend a person acting in a bizarre, mentally aberrant, or potentially criminal manner.

Although all public and private hospitals, according to Ohio law, may and do receive emergency cases, the great majority of emergency cases are taken to Central Ohio Psychiatric Hospital (COPH). The hospital must admit emergency cases for "observation, diagnosis, care, and treatment" (5122.05), but after an examination of the person, the head of the hospital must release the person if he or she believes that

emergency hospitalization is not warranted. Such release does not necessarily constitute a disagreement between the family member initiating the commitment process, or the transporting person, and the hospital staff, but may simply indicate a change in the person's mental status following a series of extraordinary intrusions into his or her life.

Following examination of the person, if the hospital staff believe that the person is a "mentally ill person subject to hospitalization by court order," they may detain the person in the hospital for up to three court-days (i.e., weekdays excluding holidays). At the end of three days, if an affidavit has not been filed to begin judicial hospitalization proceedings (5122.11) or the person has not elected voluntary hospitalization, the person must be released. Typically, if involuntary hospitalization after the three-day emergency detention is sought by a hospital, a hospital social worker either persuades a family member to file an affidavit or does so independently on behalf of the hospital. At this stage, the procedures for continued compulsory hospitalization following emergency admission follow the judicial hospitalization procedures.

The jurisdiction of the Franklin County Court of Common Pleas, Probate Division, is formally invoked by the filing of an affidavit for judicial hospitalization (5122.11). Any person or persons may file an affidavit, although the court may not accept the affidavit unless the facts alleged are sufficient to indicate "probable cause to believe that the person is a mentally ill person subject to hospitalization by court order."

Persons wishing to file an affidavit typically are referred to the Deputy Clerk who occupies the "mental illness desk" in the Probate Court. Most of the referrals are initiated by a telephone call from a family member or friend of the respondent. Physicians, mental health workers, and police officers also may make the initial referral, but, as a practical matter, do so less frequently. Those who know the location of the Probate Court may begin the process in person, often accompanied by the respondent. Cases initiated in person are referred to as "walk-ins."

In many cases, the initial contact with the Probate Court was preceeded by contact and communication with community mental health center staff, hospital officials, or police officers who, in turn, referred the person to the Probate Court if emergency hospitalization did not seem to be warranted. Of course, many of these individuals are diverted from compulsory hospitalization and may never contact the Probate Court.

When contacted by someone seeking the commitment of another, the Deputy Clerk notes the person's description of the circumstances of the case, explains the judicial hospitalization procedures to the person, and, typically, refers the person to the nearest community mental health center for what is referred to as "pre-screening." The pre-screening may result in a "doctor's letter" certifying that the respondent has been examined and is, indeed, subject to judicial hospitalization. The court

may take an affidavit without a supporting "doctor's letter" if the affiant claims that the respondent "has refused to submit to an examination by a psychiatrist, or by a licensed clinical psychologist and licensed physician" (5122.11) but seldom does so in practice. Occasionally, the "doctor's letter" is written by a physician, psychiatrist, or psychologist not affiliated with one of the three community mental health centers in Franklin County.

Following the pre-screening and with a doctor's letter in hand, the affiant next proceeds in person to the "mental illness desk" at the Probate Court to file the affidavit. As discussed further below, the majority of the persons referred to the community mental health centers for "pre-screening" are diverted from compulsory hospitalization and do not become the subject of formal affidavits.

#### B. AFFIDAVITS AND CERTIFICATES

In order to cause the Probate Court to involuntarily hospitalize a person who is allegedly mentally ill, a person (affiant) must file an affidavit with the Probate Court. The affidavit must be accompanied by a "doctor's letter" (a written statement by a psychiatrist, psychologist, or physician, or a "pre-screener" from a community mental health center) certifying that he or she has examined the person and believes him or her to be mentally ill and subject to judicial hospitalization. According to Ohio law (5122.11), any person or persons having "reliable information or actual knowledge" may file an affidavit with the court.

The affidavit serves, in effect, as a formal allegation by one person (the affiant) that another person (the respondent) requires compulsory hospitalization. From a strict legal point of view, the affidavit constitutes an allegation to establish "probable cause" to believe that the respondent is subject to compulsory hospitalization. Certificates are statements, signed by a psychiatrist, licensed psychologist, or one of the community mental health center "pre-screeners," accompanying and supporting the affidavit.

The Affidavit of Mental Illness, formally invoking the jurisdiction of the Probate Court, specifically lists the four criteria for involuntary civil commitment in Ohio, at least one of which must be met to find that a person is a "mentally ill person subject to hospitalization by a court order" (5122.01(b)). In addition to specifying the criterion or criteria upon which the jurisdiction of the Court is invoked, the affidavit must set forth sufficient facts to allow the Court to find probable cause to proceed with compulsory hospitalization.

While there was general agreement among those interviewed in Franklin County that the affidavits contained all the information required in them by Ohio law, significant dissatisfaction was voiced about the vagueness, broadness, and conclusory nature of statements made about respondents in the affidavit. Facts in the affidavit may have been based solely on previous psychiatric history of the respondent gleaned from written records. This was particularly troublesome to respondents' attorneys.

If the allegations in the affidavit are broad and vague, argued one respondent's attorney, it becomes impossible to effectively rebut them at probable cause hearings since the affiant is not required to be present and witnesses are not subpoenaed. This attorney stated that he would like to have more specific information required to be presented in affidavits. An attorney from the Ohio Legal Rights Service complained that affidavits frequently are based on belief, not actual knowledge, of facts supporting involuntary hospitalization. Yet another respondent's attorney attributed the general vagueness of the allegations in affidavits to the vagueness in statutory requirements. Similar charges of vagueness were levelled at the "doctor's letters" supporting the affidavits, although there was less agreement among those interviewed about the "doctor's letters" than about the affidavits. One Probate Court official considered the "doctor's letters," especially those written by community mental health center "pre-screeners," to be extremely thorough and informative, often exceeding two single-spaced type-written pages of text.

In addition to the affidavit, every affiant is required to complete, with the assistance of the Deputy Clerk of the Probate Court, a four-page form (see Appendix A) providing personal information about the respondent, family history, and history of mental illness. Finally, the affiant is asked to complete a financial statement for liability for support (see Appendix A) which is conveyed by the Court to the hospital for the purposes of recovery of hospitalization costs.

The procedures for filing an affidavit, and thereby formerly invoking the jurisdiction of the Probate Court, are as follows: (1) the affiant appears in person before the Deputy Clerk, after initiating the commitment process by a telephone call and obtaining a certificate or "doctor's letter," as described in the previous section; (2) the Deputy Clerk assists the affiant in completing the affidavit, a form for providing information about the social, medical, psychiatric history and personal information about the respondent, and a form entitled "Liability of Support" for reporting the financial condition of the respondent and that of relatives who might be liable for support (5121.02, 5121.06); (3) the affiant swears to the truthfulness of the information provided; and (4) one of the three referees briefly reviews the affidavit and other completed forms and, once satisfied that the statutory requirements have been met, issues a temporary order of detention (see Appendix A) ordering the sheriff to take the respondent into custody and transport him or her to a hospital (unless a "bed letter" authorizing transportation of the respondent to a private facility has been filed with the affidavit, the sheriff is ordered to transport the respondent to the Central Ohio Psychiatric Hospital).

### C. PREHEARING SCREENING, INVESTIGATION, AND REVIEW

Although not required by law, screening of mental health cases before a respondent is taken into custody and hospitalized against his or her will is accomplished in Columbus by means of three procedures. First, as mentioned in the first part of this chapter, the initial contact of a potential affiant with the Probate Court or a community mental health center serves to screen and divert many cases. Second, by



the authority of the Probate Court, community mental health centers perform extensive mental health screening before an affidavit is filed with the Probate Court. Finally, prior to issuing a temporary order of detention, a referee reviewing the affidavit must make an ex parte determination as to whether probable cause exists to believe that the person is subject to court-ordered hospitalization. In combination, these three screening procedures seem to meet the legislative intent of requiring a finding of probable cause before an individual is deprived of his or her liberty. Only the latter two more formalized procedures will be discussed in this section since the screening function accomplished by means of informal contact with the Probate Court has been discussed previously.

The investigation, review, and examination of mental health cases conducted by "pre-screeners," one in each of the three community mental health centers in Columbus, seem to have evolved from two separate provisions in the Ohio statute. Since this screening seems to be a particularly innovative and important aspect of the involuntary civil commitment process in Columbus, these statutory provisions seem worthy of note.

The affidavit may be accompanied, or the court may require that such affidavit be accompanied, by a certificate of a psychiatrist, or a certificate signed by a licensed clinical psychologist, and a certificate signed by a licensed physician stating that he has examined the person and is of the opinion that he is a mentally ill person subject to hospitalization by court order, or shall be accompanied by a written statement by the applicant, under oath, that the person has refused to submit to an examination by a psychiatrist or by a licensed clinical psychologist and licensed physician. (5122.11)

Upon the receipt of the affidavit...the court may order an investigation.

At the direction of the court, such investigation may be made by a social worker or other investigator appointed by the court. Such investigation shall cover the allegations of the affidavit and other information relating to whether or not the person named in the affidavit or statement is a mentally ill person subject to hospitalization by court order, and the availability of appropriate treatment alternatives. (5122.13)

The prehearing investigation performed by the community mental health centers in Columbus appears to be an adaptation of these two provisions in statute insofar as the screening report serves as the certificate supporting the affidavit before the affidavit (5122.11) is actually filed, instead of being limited to the investigation of the allegations of a completed affidavit authorized by Section 5122.13. As we will discuss in the concluding section of this chapter, we consider the Columbus screening procedure to be particularly innovative and praiseworthy, though not without some questions as to statutory authority.

In practice, the screening of mental health cases in the community mental health centers is accomplished in close coordination with the Deputy Clerk of the Probate Court, hospital officials, and law enforcement personnel. A person seeking judicial hospitalization of another contacts either the Probate Court or one of the hospitals and, in turn, is referred to the pre-screener in the nearest community mental health center. As noted in the previous section of this chapter, the certificate or "doctor's letter" may be completed by a private psychiatrist or psychologist. When such is the case, no pre-screening is performed by the community mental health centers. The pre-screener may speak to the Deputy Clerk or the potential affiant in an attempt to determine whether his or her allegations warrant direct intervention by the community mental health center. The pre-screener always attempts to persuade the potential affiant to bring the respondent to the community mental health center for evaluation, but, according to one pre-screener we interviewed, in only one of 20 cases is this accomplished. In most cases, the pre-screener travels to the residence of the respondent and attempts to there interview both the respondent and the affiant. According to one pre-screener, on only two occasions over a period of four years has she been unsuccessful in her attempts to interview the respondent. Two forms, entitled "Mental Status Examination" and "Probate Pre-Screening Form" (see Appendix A) are used by the pre-screener to record information acquired during the interviews with the potential affiant and the respondent. The completed forms are the bases upon which the pre-screener prepares the certificate that the affiant submits in support of the affidavit. The forms themselves are not submitted to the Court.

If, after interviewing the respondent and the affiant, the pre-screener considers the respondent to be a mentally ill person subject to judicial hospitalization, he or she will write a letter of recommendation (a "doctor's letter") to the Probate Court in support of the affidavit. Typically, the pre-screener gives the letter to the affiant in a sealed envelope for delivery to the court. If, on the other hand, the pre-screener determines that judicial hospitalization is not warranted, he or she diverts the potential respondent from compulsory hospitalization. According to one pre-screener, approximately three-quarters of the respondents screened are diverted from involvement with the Probate Court. She estimates that 100-200 persons are screened monthly by the community mental health centers in Franklin County alone. If these estimates are accurate, the screening function performed has both practical and legal benefits of considerable significance. Respondents may be diverted in a number of ways. The pre-screener may suggest that the allegedly mentally ill person move from the environment in which the problems are occurring; he or she may suggest that the respondent voluntarily submit to hospitalization or enter an outpatient treatment program; he or she may suggest that members of the person's family become involved in treatment, or, he or she may suggest that criminal charges be filed against the respondent.

In all cases in which the pre-screener travels to the home of the affiant or the respondent, he or she requests that the affiant be present upon his or her arrival. At the time of the initial telephone contact with the potential affiant, the pre-screener typically asks

whether the respondent is armed or seems to be otherwise unusually dangerous. If so, he or she will typically request that law enforcement personnel be present at the time and place of the interview with the respondent.

Once the affiant has appeared in the Probate Court, completed the affidavit and other supporting forms, and submitted the supporting certificate, the final review of the affiant's allegations is made. The Deputy Clerk, a referee, and sometimes a law student intern review and check the affidavit and the supporting documents for completeness. The referee then makes an ex parte determination of whether there is probable cause to believe that the "person in the affidavit is a mentally ill person subject to hospitalization by court order" (5122.11). Upon such determination, the referee issues a temporary order of detention which empowers the sheriff to take the individual into custody and transport him or her to a hospital.

#### D. CUSTODY AND PREHEARING DETENTION

In accordance with the constitutional "least drastic means" requirements, and in recognition that respondents facing involuntary civil commitment are alleged to be mentally ill rather than charged with the commission of criminal acts, Ohio law has provided that "[e]very reasonable and appropriate effort shall be made to take persons into custody in the least conspicuous manner" (5122.10). Further, the statute provides that the peace officer or officers taking the respondent into custody must make every attempt to safeguard the respondent's personal property at his or her residence (5122.29). Both of these provisions appear as part of the instructions on applications for emergency admission (see Appendix A).

In Ohio, peace officers or mental health personnel are authorized by statute to take a person into custody and bring the person to a hospital without prior authorization by a court if it is believed that only swift action and immediate hospitalization will prevent physical harm to the person or those around him or her (5122.10). In making the determination that a person is a fit subject for emergency hospitalization, peace officers need not have directly observed the person and may rely on the statements of another person who has observed the actions of the person to be admitted (OAG No. 79-021, 1979). It is, of course, possible for any person to present another person to a peace officer or a mental health worker and ask him or her to take the person into custody. But this procedure can only be used if the peace officer or mental health personnel has reason to believe that the person is mentally ill and "represents a substantial risk of physical harm to himself or others if allowed to remain at liberty pending examination." Put more simply, the procedure applies only if an emergency exists. Otherwise, a person can be taken into custody only by official order of the Probate Court. The intent of the Ohio law and the practice in Columbus with regard to custody and detention is quite clear: in order to permit swift action to avoid physical harm to the person and other citizens in emergency situations, there are few restrictions on who may initiate and carry out the custody-taking; in non-emergency situations, a

panoply of procedural safeguards are provided (as discussed in the previous two sections of this chapter) before a person may be taken into custody and taken to a hospital against his or her will.

Custody and detention in non-emergency cases follow the judicial hospitalization procedure and are initiated by the Franklin County Sheriff's Department. The Franklin County Sheriff's Department will not respond to a telephone request from a citizen in mental health cases. They will only take a person into custody upon the formal order of the Court. Immediately upon the completion of an affidavit and its acceptance by the Court, a referee will issue a Temporary Order of Detention (see Appendix A). Typically, the Deputy Clerk personally conveys the detention order, a copy of the affidavit, a completed case history form (including a brief description of the respondent and the respondent's last known address or location), and a form setting forth the rights of an involuntarily detained person (see Appendix A) to the sheriff's office. Two sheriff's deputies work cooperatively with the Probate Court in providing custody and transportation services upon formal orders of the court. These two peace officers, especially, have an effective working relationship with the Deputy Clerk of the Probate Court. They are held in, generally, high regard among mental health and judicial system personnel alike in Columbus.

Upon receipt of a detention order, the deputies typically proceed, in uniform and in a marked "cruiser," to take the respondent into custody and transport him or her to the hospital specified by the Deputy Clerk. In the great majority of cases, the deputies will take the respondent to the Central Ohio Psychiatric Hospital. Only when the affidavit is accompanied by a "bed letter" certifying to the willingness of a private hospital to admit the respondent will the Sheriff be ordered to transport the respondent to a private facility.

As explained by two deputies who were interviewed, once the Probate Court has issued a detention order, the respondent is considered to be the responsibility of the Sheriff's Department and the deputies will not permit family or friends of the respondent to transport him or her to the hospital, even when this is otherwise feasible and desired by the respondent. Not infrequently, according to the Sheriff's deputies, a previously reluctant or even belligerent respondent becomes very docile and willing to be taken to the hospital once the deputies arrive on the scene, and they are then asked by the respondent's friends or relatives if he or she can be taken to the hospital in a private car. They will allow a member of the family or a friend of the respondent to accompany them to the hospital in the cruiser, if it appears that this would be helpful for the respondent. They will not transport relatives or friends of the respondent back to their homes in such cases, however.

Once on the scene, the deputies explain to the respondent, friends, or relatives that they have a court order to take the respondent into custody and to a specified hospital. Although the form setting forth the rights of the respondent provided to the sheriff by the Court requires that the rights be read to and served on the respondent, the deputies generally only provide respondents with written statements of rights (for a discussion of this point, see the following section of this Chapter).

The deputies estimated that three out of ten respondents offer little or no resistance when they are taken into custody. The remainder offer some resistance varying from mild verbal abuse to threats with dangerous weapons. Before proceeding to take a respondent into custody, the deputies typically review the affidavit and other information provided by the Deputy Clerk, and assess the potential risks. On rare occasions, the Columbus police have assisted the Sheriff's Department in taking a respondent into custody.

Most of the time, the deputies are able to, and prefer to, transport respondents without handcuffs or other restraints. They felt that handcuffs are inappropriate insofar as they carry the connotation of a criminal arrest. They did note, however, that it is police policy to restrain anyone with handcuffs who is being transported in a police vehicle. For respondents posing a threat, handcuffs always are used.

One private hospital psychiatrist observed that handcuffs often were used when they were not necessary. This observation seems to conflict with what we were told by the Sheriff's deputies. The conflict may be attributable to the fact that the two peace officers interviewed are assigned exclusively to the Probate Court and may have developed a policy in regard to restraining respondents that does not correspond to that of the police or other regular officers in the Sheriff's Department. In fact, according to the two sheriff's deputies who were interviewed, during evening hours, the regular officers of the Sheriff's Department automatically handcuff all respondents.

After arriving at the specified hospital, the sheriff's deputies convey to the hospital a copy of the Temporary Order of Detention, the completed case history form, a completed Liability of Support Form, and the form setting forth the rights of the respondent (see Appendix A). The hospital always accepts and admits respondents transported to the hospital by the Sheriff's deputies, but may release them following a mental health examination. A hospital psychiatrist or social worker interviews the respondent upon admission and determines whether to hold the respondent for two or three days, provide medication, or provide an alternative to hospitalization.

The deputies, typically, remain with the respondent until the respondent has been taken into the examination room and it is apparent that the respondent is under control. They do not remain in the hospital to hear the results of the mental health examination. If the respondent is discharged following the examination, the Sheriff's Department does not take the responsibility for returning the respondent to the place from which he or she was transported.

While this study was being conducted in Columbus, a new policy was instituted whereby the Sheriff's Department would no longer transport respondents directly to Central Ohio Psychiatric Hospital for admission and judicial hospitalization, but would, instead, transport respondents to the nearest community mental health center where they would be examined and prepared for admission to Central Ohio Psychiatric Hospital if inpatient care were in fact warranted. This policy, according to one

community mental health worker, was instituted with little input from the Sheriff's Department and apparently has not been embraced and implemented by the sheriff's deputies.

At the time of our interviews with them, the two Sheriff's deputies indicated that they had not complied with this new policy but rather have continued to take respondents directly to Central Ohio Psychiatric Hospital. They stated that difficulties would arise if they were required to await the results of an examination by the community mental health center staff before transporting the respondent to an inpatient hospital. The Sheriff's deputies consider this an unwarranted extra step. They stated that in many cases they must struggle to control the respondent while getting him or her in and out of the police car and that having to repeat this struggle, once at the community mental health center and then again at the hospital, would unduly complicate their job. At this writing the deputies are increasingly taking respondents to community mental health centers, reportedly due to training efforts by the Southwest Community Mental Health Center.

Police (not the Sheriff's Department) in Columbus and surrounding localities may become involved in the involuntary civil commitment process in several ways. The police may refer a caller to the Probate Court or to one of the community mental health centers. (Once this contact has been made with the Probate Court or the community mental health center, a referral may be handled as previously described.) The police may take someone into custody and transport him or her to the nearest community mental health center pursuant to the emergency hospitalization procedures. However, the police reportedly are reluctant to take this emergency route because the community mental health centers are ill-equipped to handle extremely belligerent or violent respondents. More likely, in emergencies, police transport respondents directly to the Central Ohio Psychiatric Hospital. Harding Hospital has agreed to admit emergency patients from the north Columbus area.

In summary, Columbus peace officers effectively provide both emergency and non-emergency custody and transportation services for involuntary mental health cases. With the notable exception of cases handled by the two Sheriff's deputies assigned to the Probate Court, the circumstances and manner of transportation vary greatly depending upon individual officers, the time of the day, the particular place within the county, and other factors.

As a postscript, raising an issue to which we will return to later, we note an interesting provision in the statute that, to our knowledge, has yet to be realized in practice:

[A] person taken into custody . . . may be detained for not more than forty-eight hours in his home, a licensed rest or nursing home, a licensed or unlicensed hospital, a mental health facility, or a county home (5122.17).

#### E. NOTIFYING RESPONDENT OF RIGHTS

Ohio law provides a variety of procedural and substantive rights that must be provided to a respondent upon custody and involuntary detention. These include the right to be taken into custody in the least conspicuous manner (5122.10); the right to a lawyer (5122.05); the right to an independent mental health examination (5122.05); the right to make a "reasonable number of telephone calls" (5122.05); the right to assistance in making these calls if requested (5122.05); the right to a mental health examination within twenty-four hours of arrival at a hospital or other mental health facility (5122.10); the right to a judicial hearing within three days, upon request, to determine whether or not there is probable cause to believe that involuntary hospitalization is warranted (5122.05); and, the right to apply for voluntary admission to a hospital at any time (5122.15 (g)).

The Supreme Court of Ohio determined in re Fisher (313 N.E. 2d 851 (1974)) that the due process clause of the Fourteenth Amendment requires that respondents be advised of their right to a lawyer (appointed at public expense if necessary), and that this right be afforded at the earliest opportunity. This right to a lawyer at involuntary commitment proceedings does not extend to the presence of a lawyer during psychiatric interviews. The same court also ruled in McDuffie v. Berzzarins (330 N.E. 2d 667 (1975)) that a respondent may waive the right to counsel only upon a comprehensive examination made to determine that the respondent has sufficient knowledge of the particular facts and circumstances of the case against him or her, i.e., that the respondent is sufficiently competent to make the waiver decision.

Respondents in Columbus have the opportunity to hear or read, if not understand, their rights at the earliest stages of the commitment proceedings. Under the best of circumstances, the respondent is informed of his or her rights by six different sources before the probable cause hearing: the Deputy Clerk of the Probate Court, the deputy sheriff taking the respondent into custody, the pre-screener at the community mental health center, a social worker at the hospital to which the respondent is taken, the respondent's lawyer at their first meeting a day or so before the probable cause hearing, and the referee at the initiation of the probable cause hearing. Occasionally, in cases where the respondent accompanies the affiant to the probate court at the time of the filing of the affidavit, the deputy clerk presents the respondent with the form, Rights of an Involuntarily Detained Person (see Appendix A), immediately upon filing of the affidavit. In the typical case, however, where the respondent is not present in the Probate Court at the time of the filing, the Deputy Clerk conveys the statements of rights to the Sheriff's Department for presentation to the respondent. In accordance with statutory provisions (5122.18), the Deputy Clerk then sends notice of the respondent's custody and detention to: the head of the hospital to which the respondent is to be transported; the respondent's lawyer and the Attorney General, both of whom also receive a copy of the Temporary Order of Detention and the affidavit; the respondent's spouse or next of kin residing in Franklin County; any other persons designated by the respondent; and, the respondent's lawyer. If

the respondent is to be represented by a private attorney, the respondent must sign a release allowing the private attorney access to the respondent's records.

At the time that the respondent is taken into custody, the sheriff's deputies explain to the respondent that they have a court order and that the respondent must accompany them to the specified hospital. The law provides that immediately upon being taken into custody, the respondent be both orally informed and provided with a written statement of rights. Furthermore, the prepared form, Rights of an Involuntarily Detained Person, provided to the deputy sheriff for presentation to the respondent specifies that the rights be both read to and served on the respondent (see Appendix A). However, as a practical matter, sheriff's deputies only provide the respondent with the written statements setting forth the rights. In the past, according to the sheriff's deputies, the rights were read to the respondent as well as presented in writing. The deputies believe that the reading of the rights is unnecessary since the same rights are explained to the respondent several times upon arrival at the hospital. They also claim that the reading of the rights sometimes hinders taking the person into custody. For example, if a respondent decides to exercise immediately the right to make a reasonable number of telephone calls, the process of taking the respondent into custody may be inordinately delayed. The deputies related one particular incident in which the respondent proceeded to make a large number of telephone calls upon being informed of this right; the respondent eventually had to be interrupted from making these telephone calls in order to proceed with taking her into custody. After taking the respondent into custody and transporting him or her to the designated hospital, the officers provide a copy of the written statement of rights to the Probate Court, certifying with their signature that the rights were presented to the respondent.

Upon the respondent's arrival at the hospital, a social worker informs the respondent of his or her rights, explains the mechanics of the involuntary civil commitment proceedings, and answers any questions that the respondent may have. The hospital makes an attempt to contact relatives of the respondent and inform them about the forthcoming hearing; however, because probable cause hearings are held within three days of the receipt of an affidavit, family members may not get sufficient notice of the hearing. At Harding Hospital, the rights are briefly explained to the respondent at the time of admission and again, at length, by a senior nurse who is designated to perform this function.

Typically, a day before the probable cause hearing, the respondent's counsel again informs the respondent of his or her rights and describes the mechanics of the commitment process. There are no indications that attorneys notify the respondents of their right to appeal or of the availability of other remedies or alternatives to compulsory hospitalization except the election of voluntary admission.

At the start of the probable cause hearing, the referee informs the respondent, if present, of the right to a probable cause hearing within three days of the filing of an affidavit, the right to a full hearing within ten days of a finding of probable cause, the right to a



lawyer and an independent examiner, and the right to apply for voluntary admission to the hospital at any time. In at least one probable cause hearing we observed, the referee also informed the respondent that if he or she chose to become a voluntary patient before the full judicial hearing all records would be expunged. When respondents are absent from the hearing, the referees inquire as to whether the respondents' attorneys have personally met with them and informed them of their rights.

#### F. CONCLUSIONS AND RECOMMENDATIONS

The involuntary civil commitment process in Columbus that occurs before a respondent is hospitalized is exemplary and praiseworthy in terms of the legal rights and protections afforded the respondent, the opportunities for diversion from compulsory hospitalization, and the apparent economy and effectiveness of the procedures. Although there may be deficiencies, as will be discussed below, these are not major. Perhaps the strongest aspect of the pre-hospitalization procedures in Columbus are the pre-screening of respondents and the investigation and review of the affidavit. These procedures promote fair, prompt, and reliable decision-making. The community mental health center screening, especially, is a model for other jurisdictions to adopt. Another strength in the prehearing process is the persistent and repeated notification of rights. Yet another is the requirement that both emergency and judicial hospitalization be supported by written statements. Deficiencies include a lack of adequate training for peace officers and a lack of coordination of components of the prehearing process. Both the strengths and the weaknesses of the pre-hospitalization process are discussed below.

##### Initiating Involuntary Commitment

An important strength of the Ohio law is that it provides only two basic mechanisms (emergency and judicial hospitalization) by which involuntary civil commitment and treatment can be initiated and imposed. Because of the safeguards provided, it would seem difficult to set these mechanisms in motion in Franklin County frivolously or improperly. Emergency hospitalization, potentially abusive to the rights and interests of a respondent, if it could be carried out by any person, can only be carried out by a psychiatrist, licensed clinical psychologist, licensed physician, health officer, parole officer, police officer, or sheriff. These individuals may bring a respondent to the hospital but must provide a written statement, on a prepared form, to the hospital to support emergency hospitalization. The written statement constitutes a formal application for emergency admission to the hospital and must be completed and signed by the person transporting the respondent to the hospital.

While the restrictions on who may initiate the emergency hospitalization procedure and the requirement of a written statement to the receiving hospital do not necessarily prevent abuse, they make such abuse more difficult. In brief, not anyone may initiate emergency hospitalization. On the other hand, these restrictions and procedural safeguards do not preclude prompt access to emergency hospitalization.

Any person may bring another person directly to a hospital for emergency care and the hospital will provide such care, if warranted, pursuant to emergency or judicial hospitalization.

Similarly, the procedures in Columbus for setting in motion non-emergency judicial hospitalization balance safeguards for the respondent with the interests of the affiant and the county in causing the hospitalization of persons who may be subject to involuntary civil commitment. Affidavits are available only in the Probate Court and only after certification by a physician or mental health worker that an affidavit for hospitalization is warranted by the mental condition of the respondent. Affiants typically must speak with the Deputy Clerk of the Probate Court and with a private physician, psychiatrist, psychologist or community mental health center staff, and have the respondent submit to a mental health examination before the court will accept an affidavit. Again, frivolous and improper actions toward judicial hospitalization are discouraged by the requirements.

Three recommendations for adjustments in the Franklin County procedures for initiating involuntary civil commitment are proposed. Here and elsewhere in this report, recommendations are discussed in the text preceding and following the recommendations. The first two recommendations concern improvements in the access to, and information about, emergency hospitalization procedures provided to mental health and law enforcement personnel; the third proposes an augmentation of the function and status of the "mental illness desk" of the Probate Division of the Franklin County Court of Common Pleas.

RECOMMENDATION: THE PREPRINTED FORM, "APPLICATION FOR EMERGENCY ADMISSION," WHICH SETS FORTH THE REQUIREMENTS FOR THE STATEMENTS SUPPORTING EMERGENCY HOSPITALIZATION, SHOULD BE MADE READILY AVAILABLE TO ALL MENTAL HEALTH AND LAW ENFORCEMENT AGENCIES IN FRANKLIN COUNTY, ALONG WITH DETAILED INSTRUCTIONS FOR ITS USE IN INITIATING EMERGENCY ADMISSION.

While there may be some justification for keeping the initiation of the judicial hospitalization procedure a relatively formidable undertaking for the general public, no such justification seems to exist for initiation of the emergency hospitalization procedure. Police officers who were interviewed were unaware of the existence of preprinted forms to facilitate the submission of written statements supporting emergency admission, and they were uninformed about what might be expected of them in emergency hospitalizations. This lack of information may be particularly acute in localities outside of Columbus but within Franklin County. Pursuant to the new policy whereby peace officers transport respondents first to the community mental health center "portals," the need for readily available emergency hospitalization applications may be reduced. That is, the procedure of taking a respondent to a nearby community mental health center instead of to Central Ohio Psychiatric Hospital may prove to be less of a burden for peace officers and, at the same time, discourage inappropriate involuntary hospitalizations.

A significant proportion (some estimates place it at one-half) of the involuntary civil commitments in Franklin County are initiated by the emergency hospitalization procedure. It, nonetheless, remains relatively mysterious to many of the people interviewed in Franklin County.

RECOMMENDATION: TRAINING SHOULD BE PROVIDED TO LAW ENFORCEMENT PERSONNEL WITHIN FRANKLIN COUNTY BY A CONSORTIUM OF INDIVIDUALS FROM THE PROBATE COURT, THE COMMUNITY MENTAL CENTERS IN FRANKLIN COUNTY, THE CENTRAL OHIO PSYCHIATRIC HOSPITAL, HARDING HOSPITAL, AND THE OHIO LEGAL RIGHTS SERVICE IN THE RATIONALE AND PROCEDURES FOR EMERGENCY HOSPITALIZATION. THE BASIS OF THIS TRAINING SHOULD BE A DETAILED DESCRIPTION OF THE PROCEDURES (PERHAPS, A MANUAL) FOR EMERGENCY HOSPITALIZATION PREPARED BY THE PROBATE COURT.

RECOMMENDATION: IN RECOGNITION OF ITS IMPORTANT SCREENING, COORDINATION, AND PUBLIC RELATION FUNCTIONS, ESPECIALLY IN THE EARLY STAGES OF INVOLUNTARY CIVIL COMMITMENT, THE "MENTAL ILLNESS DESK" SHOULD BE UPGRADED AND BE REFERRED TO AS THE "MENTAL HEALTH REVIEW UNIT" OF THE PROBATE COURT. ONE OF THE THREE PROBATE COURT REFEREES NOT PRESIDING AT JUDICIAL HEARINGS SHOULD BE DESIGNATED AS A "MENTAL HEALTH REVIEW OFFICER," AND THE DEPUTY CLERK CURRENTLY MANNING THE "MENTAL ILLNESS DESK" SHOULD BE DESIGNATED AS THE "MENTAL HEALTH REVIEW ASSISTANT." TOGETHER THESE TWO INDIVIDUALS SHOULD PERFORM ALL REFERRAL AND REVIEW FUNCTIONS FOR THE PROBATE COURT PURSUANT TO JUDICIAL HOSPITALIZATION AND PARTICIPATE IN TRAINING ACTIVITIES RELATED TO INVOLUNTARY CIVIL COMMITMENT IN FRANKLIN COUNTY

The Deputy Clerk of the Probate Court performs an extremely important function in the initial stages of judicial hospitalization. She responds to the initial requests of persons seeking compulsory hospitalization of relatives, friends, or neighbors. Often the persons are confused and in desperate need of reliable information and prompt decision-making. She further causes a screening investigation to be completed by a community mental health center. As unimportant as this initial contact with the public may seem at first blush, it causes the diversion of many cases to appropriate alternatives to compulsory hospitalization and serves an important public relations function for the Probate Court. As will be discussed further in this report, the "mental illness desk," as it is currently referred to, performs other important functions as well, including coordination of the Probate Court with the community mental health centers and the Sheriff's Department, and administration of court appointed attorneys and referees. The pivotal role and value of the "mental illness desk" to the smooth functioning of the initial stages of the involuntary civil commitment process in Columbus was acknowledged by everyone we interviewed in Columbus. Its value should be formally recognized and its role should be augmented.

## Affidavits and Certificates

Once having passed the procedural safeguards, and opportunities for diversion from compulsory hospitalization provided for the respondent in the initiation of involuntary civil commitment (i.e., making the initial contact with the probate court, having the respondent submit to a mental health examination, and obtaining a certificate supporting the affidavit), the affiant is assisted by the Deputy Clerk of the Probate Court in filing and completing the affidavit and other required documents. This is a significant strength in the Columbus procedures occurring before judicial hearings. Nonetheless, several minor improvements in the process of filing an affidavit may be suggested.

Although the language in the Ohio statute relating to what must be contained in an acceptable affidavit may contribute to some of the vagueness of information provided in affidavits, modifications of practices, without legislative reform, seem possible to meet the charge of some attorneys that statements of facts in the affidavits are insufficient.

RECOMMENDATION: THE DEPUTY CLERK, IN ASSISTING THE AFFIANT IN FILING THE AFFIDAVIT AND COMPLETING OTHER REQUIRED FORMS, AND THE REFEREE, IN MAKING HIS OR HER INITIAL EX PARTE DETERMINATION OF PROBABLE CAUSE, SHOULD BE ENCOURAGED TO BE PARTICULARLY DILIGENT IN ENSURING THAT THE AFFIANT'S WRITTEN STATEMENTS ARE SUBSTANTIATED, WHEREVER POSSIBLE, BY REFERENCES TO THE RESPONDENT'S RECENT ALLEGED BEHAVIOR.

It should be emphasized that this recommendation does not suggest a great modification of current procedures. It merely suggests a matter for greater emphasis and, perhaps, a greater coordination between the Deputy Clerk and the "in-house" referees, as referees are called who do not preside at the judicial hearing.

RECOMMENDATION: PSYCHIATRISTS, LICENSED PSYCHOLOGISTS, AND THE COMMUNITY MENTAL HEALTH CENTER "PRE-SCREENERS" SHOULD PROVIDE, AT A MINIMUM, THE RESULTS OF A FULL STANDARD MENTAL STATUS EXAMINATION REPORT AS PART OF THEIR CERTIFICATION IN SUPPORT OF AN AFFIDAVIT.

This information will provide evidence that a careful mental examination has been conducted and will provide the factual basis for diagnoses and opinions. This recommendation may be somewhat difficult to implement with private psychiatrists and psychologists since their contact with the court is minimal. However, the certificates provided by the community mental health center "pre-screeners" reportedly already do provide sufficient information supporting the affidavit and, therefore, may be adapted by the probate court as a model for such certificates and adopted by private psychologists and psychiatrists who may provide certificates and support of affidavits.

The question of what constitutes a "standard mental status examination" undoubtedly will generate differences of opinion among psychiatrists, psychologists, and other mental health workers. This

should not detract, however, from the importance of this recommendation, though it might make it harder to implement.

#### Prehearing Screening, Investigation, and Review

The Columbus procedures for screening, investigating, and reviewing of mental health cases before the respondent is taken into custody are exemplary. There is obviously less curtailment of liberty for those individuals successfully diverted from judicial hospitalization as a result of the initial contact with the Probate Court, the community mental health centers pre-screening, and finally, the ex parte review of the allegations in the affidavit by a referee. The screening procedures, when successful in diverting mentally ill individuals from judicial hospitalization, also embody the best intents of law and mental health practice by providing the opportunity for treatment in a least restrictive environment that is less disruptive of family, social, and economic ties and activities of the respondent.

Although contemplated in most progressive involuntary civil commitment statutes throughout the country, the Ohio law not excepted, it is a rare occurrence, indeed, when a respondent remains at liberty pending a judicial hearing but after an affidavit has been filed. Society simply does not seem willing to bear whatever burden may be involved in maintaining contact with a respondent outside of a hospital during the prehearing period, except in very rare domestic cases. The three screening mechanisms employed in Columbus provide prompt, reliable, and effective decision-making about whether respondents should be taken into custody in the first place. In many jurisdictions throughout the country, it is implied that a respondent may, ideally, remain at liberty between the time an affidavit is filed and the judicial hearing (see Section 5122.17 of the Revised Code noted earlier); however, it is tacitly accepted that a respondent must be taken into custody once an affidavit is accepted by the court.

The screening mechanisms also appear extremely advantageous for the people of Columbus because they seem cost-effective. In the absence of such screening mechanisms (assuming even very conservative estimates of the number of people diverted from judicial hospitalization) it is not inconceivable that judicial costs would soar.

RECOMMENDATION: THE PROBATE COURT SHOULD BE ENCOURAGED TO INCREASE ITS COORDINATION WITH THE THREE COMMUNITY MENTAL HEALTH CENTERS IN COLUMBUS IN SCREENING AND DIVERTING INITIAL REQUESTS FOR JUDICIAL HOSPITALIZATION APPLICATIONS.

RECOMMENDATION: SUFFICIENT FUNDING SHOULD BE PROVIDED FOR MAINTAINING COMMUNITY MENTAL HEALTH CENTER PRE-SCREENING OF POTENTIAL RESPONDENTS.

Effective community mental health-judiciary interactions are far from commonplace throughout the country. The manner in which the Deputy Clerk of the Probate Court in Columbus coordinates the processing requests for judicial hospitalization with pre-screeners in the community

mental health centers in Columbus is a positive aspect of the prehearing process. Many jurisdictions virtually ignore the point of entry for individuals subject to involuntary civil commitment. A good interaction between the community mental health centers and the probate court in prompt, reliable decision-making seems in the best interests of the person making the initial contact (the potential affiant), the allegedly mentally ill person, and the people of Columbus.

The first recommendation above appears relatively simple to implement, since it is implemented to a large extent already. In fact, at this writing Southwest Community Mental Health Center, as a matter of policy, reportedly maintains control of all prescreening in Columbus, is the "portal" for all involuntary admissions to Central Ohio Psychiatric Hospital (COPH), and retains "control" of such admissions for 21 days for the purposes of discharge planning. Both recommendations merely underscore what we perceive to be the procedure's value and serves to support its continued application.

RECOMMENDATION: A PRE-SCREENING PROCEDURE, MODELED AFTER THAT OF THE SOUTHWEST COMMUNITY MENTAL HEALTH CENTER, SHOULD BE ADOPTED FOR USE THROUGHOUT FRANKLIN COUNTY, IF NOT ALREADY DONE SO.

Those familiar with the community mental health center screening all seem to feel that pre-screeners do an effective and conscientious job of screening and diverting cases from the judicial system. Those respondents who are not diverted are "really sick," according to one attorney. One support for this contention is the fact that release and discharge at the Probable Cause Hearing is infrequent, though it may be arguable that this is attributable to the effectiveness of the community pre-screening.

RECOMMENDATION: THE LEGAL AUTHORITY FOR THE COMMUNITY MENTAL HEALTH CENTER PRE-SCREENING SHOULD BE CLARIFIED BY COURT RULE.

Although the pre-screening mechanism is a positive aspect of the Columbus system, the authority by which it exists may need to be clarified by the Court. The statute requires an investigation such as that provided by the pre-screening procedure in Columbus, but only after receipt of the affidavit. (5122.13). Further, the statute provides that a mental health certificate may be required with an affidavit, though there does not seem to be the intent to provide the certification under authority of the court (5122.11). It does not seem difficult, however, to reconcile the pre-screening practices in effect in Columbus with these two provisions of the law.

Another potential legal problem with the pre-screening procedures, a problem that was raised by a local psychiatrist, may stem largely from an irrational fear of liability, especially in view of the fact that no mention of the problem was made by the pre-screeners. Yet, the problem is worth airing. In the absence of an affidavit invoking the jurisdiction of the court, proceeding to an individual's home and

conducting a mental health examination constitutes an intrusion on that individual's rights to privacy, cautioned this psychiatrist. In the absence of an affidavit or a court order authorizing the pre-screening process, the process carries a high risk of liability.

RECOMMENDATION: THE EX PARTE REVIEW OF THE AFFIDAVIT AND SUPPORTING DOCUMENTS AND THE DETERMINATION OF PROBABLE CAUSE BY THE REFEREE BEFORE THE ISSUANCE OF A TEMPORARY ORDER OF DETENTION SHOULD BE CONDUCTED MORE RIGOROUSLY.

In our opinion, the final opportunity to test the allegations of the affidavit before the issuance of a temporary order of detention is under-emphasized in Columbus. Few jurisdictions provide the opportunities for review and diversion of mental health cases from involvement with the judicial systems that are provided in Columbus. But the opportunities may be more fully exploited. Given that the Probate Court already has the extant resources to commit to a rigorous ex parte determination of probable cause by their "in-house" referees, an upgrading of this last "test" of the allegations of the affidavit seems a small step to take.

RECOMMENDATION: RESPONDENTS' ATTORNEYS SHOULD HAVE READY ACCESS TO PRE-SCREENING REPORTS.

The pre-screening reports contain valuable information about the respondent and his or her environment typically unavailable from other sources. Only the pre-screener has the opportunity to examine the respondent in the context of home and family. Subsequent examinations, as will be discussed in the next chapters, are conducted while the respondent is hospitalized in an environment most likely unfamiliar to him or her. Also, the pre-screener has the opportunity to observe and interview the respondent at the time, or close to the time, that the allegations pursuant to judicial hospitalization are made, when the respondent is uninfluenced by the process of institutionalization.

RECOMMENDATION: THE COURT SHOULD EXPLORE THE POSSIBILITY OF HAVING THE COMMUNITY MENTAL HEALTH CENTER PRE-SCREENER ASSUME THE ROLE OF THE COURT'S EXAMINER.

Though it is not without problems pointed out by several reviewers in Columbus, this recommendation has implications for cost-savings and for providing the Court with more complete information concerning the mental status of the respondent at the time of the allegations in the affidavit. As suggested in the commentary following the previous recommendation, the pre-screening procedure as presently implemented at the Southwest Community Mental Health Center arguably provides perhaps the most complete information about mental health cases available to the Court. Also, since the court incurs the costs of pre-screening whether or not the case proceeds to a judicial hearing it seems reasonable to suggest that the Court extend the involvement of the pre-screener to providing testimony during hearings. It should be emphasized here that we are not critical of the performance of the court and independent examiners. We suggest, instead, a merger of the functions of the pre-screener and the court examiner.

Several problems of this recommendation may be, perhaps, insurmountable absent a statutory amendment. Although the statutes authorize, upon receipt of an affidavit, an investigation by a social worker (5122.13) pre-hearing medical examinations are permitted only by a "psychiatrist, or a licensed clinical psychologist and a licensed physician" (5122.14). Complicating the above recommendation may be the fact that there is no licensure requirements for social workers in Ohio and, therefore, the court would need to set up some type of qualifications for social workers in the legal arena in lieu of the type of qualifications set by licensing boards for psychiatrists and psychologists.

Were the court to contemplate allowing the prescreener to function as the court examiner, it would need to interpret the statutory intent to allow social workers to examine the respondent on the court's behalf and testify during hearings, or employ psychiatrists and psychologists, at a much greater cost, to conduct the pre-screening and the examination of the respondent pursuant to testimony at hearings. It is doubtful that psychiatrists would be fond of visiting the respondent's home to conduct an examination, a procedure well within the tradition of a social worker's discipline.

Psychiatrists and psychologists--the "pedigreed" forensic mental health professionals--may be reluctant to make room for social workers. One psychiatrist expressed his opposition to the above recommendation in a letter critiquing the "review draft" of this report.

A social worker's training, orientation, and discipline is different and it does not lend [itself] to the expertise of clinical psychopathology...Under the fire of cross-examination where diagnoses, etiology, prognosis, medication, treatment methods, etc. are questions arising every time, without any training in psychopharmacology, psychophysiology, biology, neurology, genetics, endocrinology, and so forth, and in many other areas which are not within the domain of a social worker's expertise, [he or she] would crumble and justice would not prevail and the patient or respondent would suffer...Social workers are well respected in the community, and their ascendancy lies not in assuming roles for which they are not trained and for which they do not aspire, but their ascendancy is in their immeasurable contribution in their liaison service between the hospital and the community.

The "ascendancy" of the social worker's role in mental health law has been slow, although measurable, and it may be difficult to change laws to allow social workers in the role of the court's expert. Nonetheless, if only from the standpoint of cost-savings, the possibility is worth exploration, if not now, then in the future.

#### Custody and Pre-Hearing Detention

The practices in Columbus relating to the transportation of respondents in civil commitment proceedings are generally in keeping with the statutory requirement that every reasonable and appropriate effort should be made to take persons into custody in the least conspicuous



manner possible (5122.10). With minor exceptions, the procedures employed by the team of sheriff's deputies on special assignment to the Probate Court serve the interests of economy and efficiency. The manner in which police take respondents into custody without prior judicial approval was neither criticized nor praised by those we interviewed in Columbus.

In our opinion, there are a number of minor deficiencies and weaknesses in the custody and detention procedures in Columbus that are worthy of note. We begin with the clothes that the sheriff's deputies wear and the cars that they drive, when they arrive on the scene to take custody of the respondent. To their credit the deputies interviewed noted both the advantages and the disadvantages of the procedures of using uniformed peace officers and marked police cruisers.

The only clear advantage to uniforms and marked police cars seem to accrue to the peace officers taking the person into custody. If complete docility and compliance on the part of the respondent is the goal, the greatest show of authority may be recommended. Yet the "least conspicuous manner" intent of the statute (5122.10) notably does not speak as much to disruption of procedures of the sheriff's deputies, as it does to the physical and psychological disruption in the life of the respondent. Given that the sheriff's deputies upon request of the Deputy Clerk, reportedly change into plain clothes and use unmarked vehicles to transport a respondent, it seems a small price to pay to reverse the current procedure and have officers wear uniforms and drive police cruisers only when dictated by previous information of potential difficulties.

RECOMMENDATION: IN NON-EMERGENCY CASES, RESPONDENTS SHOULD BE TAKEN INTO CUSTODY BY PEACE OFFICERS WEARING PLAIN CLOTHES AND DRIVING UNMARKED VEHICLES, UNLESS THE PEACE OFFICERS HAVE REASON TO BELIEVE THAT THE AUTHORITY OF POLICE IDENTIFICATION IS NECESSARY TO RESTRAIN A RESPONDENT. THE NECESSITY OF UNIFORMED POLICE OFFICERS SHOULD BE CONVEYED BY THE DEPUTY CLERK UPON ISSUANCE OF THE TEMPORARY ORDER OF DETENTION.

The use of unmarked cars and plain clothes is in keeping with the respondent's right to be taken into custody in the least conspicuous manner, and, to the extent that being taken into custody by uniformed police officers is psychologically traumatic, it may protect subsequent treatment interests of the respondent as well. The implementation of this provision does not appear to present a significant cost to the City of Columbus. It should be noted that reviewers were not in accord in their reactions to this recommendation.

RECOMMENDATION: COLUMBUS POLICE OFFICERS SHOULD BE ENCOURAGED TO TAKE OR REFER AS MANY ALLEGED MENTAL HEALTH CASES AS POSSIBLE TO COMMUNITY MENTAL HEALTH CENTERS INSTEAD OF CENTRAL OHIO PSYCHIATRIC HOSPITAL.

Assume that the Columbus police receive a call from a distraught person seeking help with a friend allegedly acting in a mentally aberrant and bizarre manner. Unless, in the judgment of the peace officer responding to the call, a true emergency exists, it is in the liberty interests of the respondent as well as the interests of economy and efficiency to refer the person to the community mental health center for pre-screening pursuant to judicial hospitalization. In our opinion, this diversion of mental health cases from emergency hospitalization to judicial hospitalization best complies with Ohio law and, apparently, is in keeping with policies endorsed by Central Ohio Psychiatric Hospital. As indicated earlier in this section, at this writing the above recommendation is a matter of policy.

RECOMMENDATION: ADEQUATE TRAINING SHOULD BE MADE AVAILABLE FOR PEACE OFFICERS IN FRANKLIN COUNTY ON: THE NATURE AND MANIFESTATIONS OF MENTAL HEALTH DISORDERS, HOW TO COMMUNICATE WITH AND HANDLE MENTALLY DISORDERED INDIVIDUALS AND, IMPORTANTLY, COMMUNITY RESOURCES TO WHICH MENTALLY ILL INDIVIDUALS MAY BE TAKEN OR REFERRED.

Due to a combination of lack of manpower, unfamiliarity with available resources, and a general lack of training in handling mentally aberrant (but not criminal) behavior, some peace officers reportedly have resorted to a disturbing manner of handling mentally aberrant persons in their jurisdiction. When confronted with a seemingly mentally ill person acting in a bizarre manner that may be disturbing to those around him or her, police transport the person to the edges of their geographic jurisdiction and instruct the person not to return. According to the peace officers, an unfamiliarity with alternative procedures for dealing with the problem in an efficient manner. These officers were willing and eager to avail themselves of opportunities for training.

Training of peace officers could be initiated most expeditiously by means of a memorandum prepared by a committee of individuals from the Sheriff's Department, the community mental health centers, and the Probate Court. For example, the Deputy Clerk could contribute valuable information regarding the initiation of the civil commitment process; a community mental health center pre-screener could provide valuable information regarding procedures for taking a respondent to the community mental health center; and, finally, a member of the Sheriff's Department's "mental health team" could provide very practical information as to "dos" and "don'ts" of picking up respondents. More ambitious projects, such as training sessions, simulations, and workshops, also could be contemplated.

#### Notifying Respondent of Rights

Court officials, peace officers, mental health personnel, attorneys, and referees in Columbus are extremely conscientious in informing respondents of their rights. Respondents are notified of their rights repeatedly from the time that they are taken into custody until the Probable Cause Hearing. In general, the Columbus procedures for notification of respondent's rights are exemplary and praiseworthy. In

this section, we mention only a few matters for general consideration and make several specific recommendations for making what appears to be a very good system even better.

An explanation of rights as required by statute is obviously related to, but not perfectly congruent with, a complete explanation of the nature and consequences of the proceedings, past, present, and future, in which the respondent may be involved. Many of the individuals to whom we spoke in Columbus expressed the opinion that respondents often are not adequately informed about the entire involuntary civil commitment process, notwithstanding the many attempts to inform them of their legal rights. Respondent's attorneys report that many of their clients do not truly understand what is happening to them, what is going to happen to them in the future, and how they can go about getting various types of assistance. By all indications, those individuals who come into contact with respondents, in concert, make a sincere and diligent attempt to provide such explanation. Some suggest that sufficient comprehension may be beyond the capacities of many respondents.

While it is clear that most respondents in Columbus receive notification of their rights as required by law, several interviewees raised questions about the efficacy of persistent and repeated explanation of these rights. Several hospital staff considered such explanations to be a waste of time, believing that respondents are mostly too ill, anxious, and generally too confused to comprehend that which is being explained to them. They suggest that overwhelming respondents with what may be perceived as nothing but confusing papers and verbal gibberish merely exacerbates an already strained situation. Of course, the impression developed by attorneys that respondents often act as if they are hearing information for the first time may be attributed to the possibility that respondents, in fact, were provided the information but were unable to understand or remember it. Indeed, it is possible that the information presented by the attorney makes no more lasting an impression than that provided previously by a sheriff's deputy, the community mental health center pre-screener, or the hospital staff. While attorneys and judges seem to be reassured merely by seeing that the information about rights is transmitted, they acknowledge that the language and concepts are complex and are likely to confuse even mentally healthy people. Others in Columbus, who are removed from the day-to-day contact with hospitalized individuals and have the luxury to reflect, are concerned that only the minority of respondents truly understand their legal rights. These individuals suggest that more thoughtful counseling with each respondent is necessary. The recommendations below address some of these concerns. We hasten to add, however, that the recommendations should not be taken as a criticism of the Columbus procedures for notification of respondents' rights. It remains the most thorough and conscientiously applied set of procedures we have observed.

RECOMMENDATION: IN ACCORDANCE WITH OHIO LAW AND COURT RULES, SHERIFF'S DEPUTIES UPON TAKING A RESPONDENT INTO CUSTODY SHOULD ORALLY INFORM THE RESPONDENT OF HIS OR HER LEGAL RIGHTS, AS WELL AS PROVIDE A WRITTEN STATEMENT OF THOSE RIGHTS.

The complaint by sheriff's deputies that respondents may in fact take immediate advantage of rights (e.g., use of a telephone) that are orally explained to them seems contrary to the intent of the law. The deputies, in enforcing the law, should encourage respondents to take full advantage of their rights. To present a person with a piece of paper setting forth his or her legal rights, when there is no doubt that the paper has no meaning to the person, is a pointless and ritualistic gesture.

RECOMMENDATION: WRITTEN STATEMENTS REGARDING LEGAL RIGHTS AND PROTECTIONS SHOULD BE PROVIDED IN SIMPLE LANGUAGE.

Statements of rights typically seem to be written and provided to respondents more to satisfy the letter of the law than to provide information to patients. To be effective, these statements of rights need to be presented in simple language. Additional information should be made available to respondents who request a more thorough understanding of their rights in the actual language of the law.

RECOMMENDATION: PROCEDURES FOR THE NOTIFYING THE RESPONDENT'S FAMILY SHOULD BE CLARIFIED AND COORDINATED.

Based on our observations, it is unclear who in the mental health-judicial system assumes the responsibility for informing the respondent's family about his or her involuntary hospitalization. We were informed that the Deputy Clerk of the Probate Court, the Bailiff of the court (located at Central Ohio Psychiatric Hospital), and hospital social workers may assume this responsibility. Given the sensitive nature of the communication, it may be advisable for hospital social workers, instead of court personnel, to advise respondents' families. Although it may cause a delay in the notification, this procedure may have therapeutic advantages for the respondent.

RECOMMENDATION: ATTORNEYS SHOULD NOTIFY RESPONDENTS OF THE AVAILABILITY OF APPEAL, WRITS OF HABEAS CORPUS, AND OTHER REMEDIES IN ADDITION TO VOLUNTARY ADMISSION.

As we will discuss further in Chapter VII, for various reasons respondents are not adequately informed of mechanisms to review contested commitments. Fairness is the underlying concern in conveying to the respondent all avenues available as alternatives to compulsory hospitalization, even if those avenues may not be well traveled.

## CHAPTER IV

### PREHEARING MATTERS AFTER THE RESPONDENT IS HOSPITALIZED

In the last chapter, we considered those matters pertaining to the process of involuntary civil commitment in Columbus before a respondent is involuntarily detained in a hospital. This chapter considers the events and procedures before judicial hearing, but after the respondent has been taken into custody and detained in a hospital against his or her will. Although the judicial hearing is considered by many to be the centerpiece of the involuntary civil commitment process, what occurs before the judicial hearing may have a greater bearing on the individual committed and, in the long term, the people of Columbus. As discussed in the previous chapter, prompt and reliable decision-making in screening and diverting mental health cases from compulsory hospitalization in the initial stages of the process protect both the individual's liberty interests and the taxpayer's pocketbook.

#### A. PREHEARING TREATMENT

A person who has been brought to the hospital by means of emergency hospitalization, i.e., without the authority of a temporary order of detention, must be examined by the hospital staff within 24 hours of admission (5122.10). After examining the respondent, if the hospital staff believe the person to be sufficiently mentally ill to be subject to compulsory hospitalization, they may detain the person involuntarily for up to three days, during which the hospital must file an affidavit pursuant to judicial hospitalization (5122.11), convince the person to be hospitalized voluntarily, or release the person. A respondent taken into custody by order of the court following the filing of an affidavit may be observed, diagnosed, cared for and treated in a hospital (5122.05) until such time as a probable cause hearing is held. Although two provisions in the Ohio law permit in theory the hearing of probable cause before the respondent is actually taken into custody (5122.141 and 5122.17), this rarely occurs in practice. Thus, the delicate matter of the administration of mental health treatment before an adversarial hearing is relevant for all respondents who are not diverted from compulsory hospitalization and are admitted to the hospital.

Strong conflicting interests are at stake in mental health treatment before full judicial review. On the one hand, it has not yet been determined by judicial review that the criteria for involuntary civil commitment have been met. The person may, in fact, have been wrongfully detained. On the other hand, the respondent's deteriorating mental condition and aberrant behavior may seriously threaten not only his or her own safety, but that of those around him or her. And, to make matters even more difficult, practical considerations of economy, efficiency, and convenience also must be considered, if not openly acknowledged, in attempting to balance conflicting forces and values.

From discussions with hospital staff, we sensed no clear, consistent policy regarding prehearing treatment. In general, respondents are to be provided with "adequate medical treatment for

physical disease or injury" and receive "humane care and treatment in the least restrictive humane psychological and physical environment within the hospital facilities" (5122.27). Except for especially intrusive treatment (surgery, convulsive therapy, major aversive interventions, sterilization, any unusually hazardous treatment procedures, and psycho-surgery), Ohio law does not speak to the issue of prehearing treatment. As a general practice, some hospital psychiatrists and physicians are reluctant to treat respondents before the probable cause hearing due to a fear of liability. They may, however, prescribe some type of therapy other than medication before the probable cause hearing. One psychiatrist reported that some of the hospital's staff seem preoccupied with liability issues, which, to the detriment of their best clinical judgments, causes them to be overly cautious.

#### B. MENTAL HEALTH EXAMINATION

Before a respondent in Columbus appears at a probable cause hearing, he or she is likely to have received at least four mental health examinations. The first is performed by a social worker at a community mental health center for the purposes of pre-screening (5122.11, 5122.13). The second is performed by hospital staff within twenty-four hours after the respondent's arrival (5122.10). The third mental health examination is conducted by a psychiatrist appointed by the court to determine the "mental condition of the respondent, and his need for custody, care, or treatment in a mental hospital" (5122.14). Last, the respondent is examined by an independent expert. Although statute provides the respondent the right to select a psychiatrist, licensed-clinical psychologist, or physician of his or her own choosing to evaluate his or her mental condition, most Franklin County respondents are indigent and expert evaluation is provided at public expense (5122.05). In Franklin County, independent experts are appointed by the Court as are court experts.

As discussed in the last chapter, the pre-screening examination is not required by law and is not performed in Columbus when (1) the affidavit was supported by the certification of a private psychiatrist or psychologist retained by the affiant, thus, not requiring a doctor's letter from a community mental health center screener, and (2) when a respondent is taken directly to a hospital and admitted on an emergency status.

Taken as a whole, the purpose of the mental health examinations before the judicial hearing, as intended by Ohio law (5122.14, 5122.13) and the practice in Columbus, is to test the allegations in an affidavit or application for emergency admission and to determine, from mental health practitioners perspectives, whether the respondent should be involuntarily hospitalized. The information gained as a result of these examinations should inform judicial determinations. The examinations provide an adequate, perhaps even an excellent protection against improper hospitalization, when compared to other jurisdictions. Only one person whom we interviewed in Columbus complained of the inadequacy of the mental health examination, claiming that some respondents in Central Ohio Psychiatric Hospital are not examined to determine the need for compulsory hospitalization. Hospital staff and community mental health

center staff felt that this claim was unfounded. In our opinion, it is conceivable, but unlikely, that a respondent may slip through the net of examinations provided in Columbus. The system of mental health examinations provided in Columbus provide more than an adequate check on improper involuntary hospitalization before judicial hearing.

On the negative side, inadequate use is made of the information acquired during the examinations that are performed. From the perspective of economy and efficiency, the ratio of information acquired during the examination to that actually provided and used can be greatly improved. Many of the attorneys, and some of the referees and mental health workers in Columbus pointed out a redundancy in the prehearing examination process. Several attorneys recommended the elimination of either the court examiner or the independent examiner, although not both. This redundancy provides a strong check against improper involuntary hospitalization, but, as we will discuss, it arguably does not sufficiently balance that need against the interests of economy and efficiency.

Beyond the basic similarity of purpose--assessing mental status and need for hospitalization--there are differences in the conduct and consequences of the examinations. As discussed in the previous chapter, pre-screening examinations are typically conducted by a social worker from a community mental health center, more often than not at the home of the respondent. By all accounts these examinations are conducted thoroughly and diligently. The pre-screener inquires about previous psychiatric problems, present mental status, behavioral problems, and the social history of the respondent by means of interviews with the respondent and the affiant. Frequently, existing hospital records are reviewed by the pre-screener before proceeding to the respondent's home. According to one pre-screener, it is customary practice to explain to the respondent the purpose of the visit and interview, the nature of the complaint, and other factors of particular relevance.

The time and extent to which information gleaned during pre-screening is conveyed to the court for judicial use determination are unclear. Under judicial hospitalization procedures, the pre-screener's doctor's letter accompanies the affidavit, and the respondent's attorney, social worker, attorney representing the state (see Chapter VI), and hospital staff have access to this information. When no affidavit is filed in emergency situations, and when no pre-screening report is provided in support of the affidavit, it was unclear to us to what extent the pre-screening information is communicated for legal and mental health treatment purposes. Although several attorneys indicate that they frequently made contact with the pre-screener and inquired about the particulars of a mental health case, much of the valuable information obtained about less restrictive alternatives, present and past family and social environment, and present mental condition of the respondent seems not to be utilized.

Consistent with Ohio law, respondents are typically examined by hospital staff within twenty-four hours of arrival at the hospital. Apparently, these examinations are provided promptly. They vary in duration and the manner in which they are conducted according to the type

of mental health problems exhibited by the respondent, his or her present demeanor, as well as the professional and personal style of the examiner. Only one weakness in the hospital examination process was brought to our attention by a hospital psychiatrist--apparently, Central Ohio Psychiatric Hospital does not have a perfectly suitable place to conduct such examinations. Persons involuntarily hospitalized are examined in non-private places in the hospital that are relatively far-removed from the place of admission.

Although Ohio law provides that the examination "shall be held at a hospital or other medical facility, at the home of the respondent, or at any other suitable place least likely to have a harmful effect on the respondent's health" (5122.14), respondents are almost always examined in the hospital a day or less before judicial hearing. Once again, the examinations may vary in duration, content, and style depending upon the particulars of the case, the behaviors exhibited by the respondent during the examination, and the professional and personal preferences and style of the examiner. Attorneys, referees, and mental health personnel all praised the competence and performance of the independent and court expert, both appointed by the court.

A few attorneys complained, however, that the examinations were conducted too close in time to the hearing to allow adequate time for conferences with the examiners. Some attorneys felt hard-pressed to prepare their cases adequately because examiners perform their mental health examinations just prior to the judicial hearing. Thus, while the short period of prehearing detention before judicial hearing is a strength in the Ohio law and the practice in Columbus, as discussed in the previous chapter, it has some legal disadvantages.

The "independence" of the independent examiners in Columbus can be questioned. Because they are appointed by the Probate Court in most cases (rather than being chosen by respondents) it may be argued that they are too closely aligned with either the Court or the hospital. It was pointed out by those we interviewed and directly observed during both probable cause and full judicial hearings, that the court examiner and independent examiner usually agree in their diagnoses of the respondent's mental condition. To their credit, however, the examiners tend to emphasize in prognoses those conclusions and opinions that are consistent with their implied roles either to support or refute the need for compulsory hospitalization. No unfair bias was suggested by individuals in Columbus, nor did we observe such bias in the judicial hearings. With regard to the examiners' possible unfair or improper alignment with hospital interests, there were strong indications from hospital staff, and from our observations of hearings, that just the opposite was true.

Once the examiners have performed their evaluation of respondents and provided the Court with the necessary information, it may be arguably desirable to make this information available to the hospital treatment team if the respondent is committed. However, there seems to be no coordination or noticeable cooperation between hospital staff and the court-appointed examiners. None of the privileges and access accorded hospital psychiatrists are provided to the court appointed



experts, though no animosities seem to exist. In fact, this relative lack of coordination and cooperation of the respondent could be viewed as a weakness in the system from the perspective of treatment interests. Consistent with a point made above, the interests of economy and efficiency are also not well served by this separation and independence of the examiners.

### C. OPPORTUNITIES FOR VOLUNTARY ADMISSION

Once a respondent is involuntarily hospitalized and awaiting a judicial hearing, should he or she be given the opportunity to become a voluntary patient? And, if so, under what conditions?

Ohio law, like the laws in many states, recognizes that a person who has been hospitalized involuntarily but who does not object to hospitalization might benefit by allowing him or her to apply for voluntary admission to the hospital. According to Ohio law, any person who has been hospitalized involuntarily, (except for those hospitalized pursuant to incompetency to stand trial and insanity pleas), may at any time apply for voluntary admission to the hospital where he or she is committed (5122.15). There may be both therapeutic and legal advantages for the respondent to elect voluntary admission to the hospital. The respondent who recognizes his or her need for treatment and hospitalization, and seeks it voluntarily, may be more likely to benefit from treatment. Further, by electing voluntary admission to the hospital before any hearings have occurred, the respondent avoids the stigma of compulsory hospitalization, the commitment case will be dismissed, and all court records will be expunged if the person becomes a voluntary patient before the probable cause hearing. This may be important for respondents, because journal and docket entries of commitments are technically accessible to the public in Ohio, and may be consulted by potential employers of the respondent, credit companies, and land-title companies (5122.31). However, although Ohio law make journal and docket entries of commitments technically accessible to the public, the Franklin County Probate Court, on its own initiative, has removed all journal and docket entries of commitments from the general public indexing since 1976. Therefore, all records and all dockets in Franklin County Probate Court are confidential pursuant to court policy.

Where the signing of a voluntary admission and a subsequent request for discharge constitutes a change in attitude on the part of the respondent, increased insight into his or her problems, and a gaining of control and responsibility, no objection is raised to the change in status to voluntary hospitalization and subsequent discharge. When, however, the voluntary admission and subsequent request for discharge goes against the better judgments of hospital staff, or appears to be a manipulation of the system by a respondent who truly needs treatment, difficulties arise.

Discharge is not solely in the discretion of the patient. Nor can hospital staff simply deny a request for discharge by a respondent who has been granted voluntary admission. The right of any voluntary patient in Columbus to be released upon written request is qualified by a

provision allowing the head of the hospital to file an affidavit with the court pursuant to judicial hospitalization, within three days from the receipt of the application for voluntary admission.

This procedure generally engenders no complaints from legal and mental health practitioners in Columbus. But in some instances respondents request and are granted voluntary admission and the hospital, in turn, responds with the filing of an affidavit. This sequence may be repeated several times. Sometimes, in a frustrated response to this shuffle, especially when the respondent resists treatment efforts, the hospital releases the respondent.

The frustrations of the hospital staff caused by this problem is well expressed by one psychiatrist in a recent letter to Probate Court Judge Richard B. Metcalf:

[P]atients, led by their wishful thinking and confused by their psychosis or disorganization of their thinking processes, misinterpreted the true intent of this clause [right to release of voluntary patients] and considered their voluntary status as the first step toward discharge.

[T]he patient may refuse medication which, in light of our present understanding of modern psychiatric treatment for serious mental diseases, is the only effective treatment modality, particularly in the initial phase of the illness. This short notice [the three-day request for discharge], however, puts the hospital in a position where, unless the patient does something spectacularly dangerous, they would give in [release] and keep their fingers crossed.

[T]hey are soon returned [u]sually by their bewildered and often frightened relatives, or by the law enforcement officers.

It would require an independent committee to evaluate the full extent of this revolving door procedure, and, in my experience, this committee would get the hospital staff's full cooperation and assistance since they feel thoroughly frustrated, helpless and demoralized. (Emphasis added)

The psychiatrist who wrote the letter from which these quotes were drawn cited eight specific cases, by name and case number, that were readmitted a total of 106 times. Readmissions in individual cases ranged from 7 to 26 different occurrences.

A different aspect of the same problem concerns the capacity of the respondent to sign an application for voluntary admission. The possibility of signing a voluntary admission form should be fully and carefully discussed with the respondent. Obviously a respondent should never be forced into "voluntary" admission. Pointing to the number of respondents diverted to voluntary admission, several attorneys express a fear that voluntary admission may be coerced by hospital staff. It is estimated that in Columbus, five out of ten respondents who are initially hospitalized involuntarily become voluntary patients before the probable cause hearing, and two more of the remaining five may elect to become

voluntary patients before the full hearing. These are conservative estimates according to data recently collected by the Franklin County Probate Court and the opinions of mental health personnel in Columbus.

Once a respondent is admitted to the hospital, a social worker is assigned to the respondent's treatment team and has a responsibility to offer the respondent the right to become a voluntary patient. According to hospital staff, respondents are told of their right to request discharge as voluntary patients, as well as the possible restrictions on that discharge by the refile of an affidavit. Hospital staff reportedly encourage the election of voluntary admission by respondents, when warranted by their mental condition, for several reasons beyond treatment considerations:

- 1) Most treating professionals shun the real and imagined consequences of contact with the adversarial system, and feel very uncomfortable in treating patients who may have been forced to the hospital by the courts.
- 2) Similarly, the hospital staff considers it contrary to their purpose to treat patients whose rights have been curtailed.
- 3) Finally, hospital staff prefer to avoid the burden of paperwork and the expenditure of resources necessitated by the involuntary civil commitment process.

Although several hospital administrators have candidly admitted that the conversion of many respondents to voluntary statuses was partly motivated by bureaucratic convenience, they forcefully denied any coercion of patients. They stated that the conversion to voluntary status is always in the respondent's best interest. It should be pointed out, in support of the hospital staff's statements, that the practice of coercing voluntary applications would be inconsistent with the frustrations expressed over those patients who prematurely and inappropriately request voluntary status thereby adding to the so called "revolving door" problem.

#### D. DISCHARGE AND RELEASE

Consistent with the policy of deinstitutionalization of the Ohio Department of Mental Health, the head of the hospital has broad powers to discharge any respondent before judicial hearing. Regardless of whether a respondent has been admitted to the hospital pursuant to emergency hospitalization or judicial hospitalization, he or she must be examined within 24 hours after admission (5122.10, 5122.19). If the hospital staff fail to find a respondent sufficiently mentally ill and dangerous to warrant compulsory hospitalization, the head of the hospital must release the respondent. It should be noted that this broad power to discharge a person extends even after the judicial hearing. Unless the respondent has been indicted or convicted of a crime, the head of the hospital may discharge a respondent without the consent or authorization of the probate court (5122.21).

According to hospital staff, discharge of the respondent following mental health examination is not uncommon, especially in emergency hospitalization cases. At least partly due to a broad interpretation of what constitutes a mental health examination at the time of hospital arrival, hospital staff, attorneys, and referees have some differences of opinion about prehearing discharge. Attorneys and referees hold the opinion that the hospital must "admit" the respondent, conduct an examination, and then, if warranted, release the respondent. In practice, hospital staff state that they will often "refuse to admit" at the point of hospital admission when the mental health case seems inappropriate for compulsory hospitalization. Illustrative examples that were cited include that of a woman who refused to wear clothes and a man who repeatedly threatened to commit suicide--examples constituting more of a behavior problem than a mental illness problem, according to one hospital administrator. Difference of opinion about practice most probably stem from semantic difficulties in the use of the word "admit." Hospital staff may refuse to "admit" a respondent with behavior problems, although they readily accept such cases for initial examination.

Even though many respondents are discharged "warm with symptoms," hospital staff consistently stated that discharge would be even more frequent if a sufficient number of community facilities for rehabilitation and aftercare (e.g., licensed supervised homes) existed. They acknowledge that many respondents are discharged properly because they no longer meet legal criteria for involuntary civil commitment in an inpatient facility; but they are yet unprepared from a mental health perspective to enter the community without support. Some who are released require the care that could be provided in licensed supervised homes, for example. But there are few places to discharge respondents, according to hospital staff. If there were, respondents would be discharged earlier and more frequently than at present.

Of course, a respondent may at any time seek release from the hospital by convincing his or her treatment team that he or she no longer requires hospitalization. As discussed in the previous section, the respondent may then be encouraged to submit an application for voluntary admission, or the treatment team may simply discharge the respondent. It is not uncommon, also, for the respondent to instigate de facto release simply by walking away from the hospital (Central Ohio Psychiatric Hospital is considered a "minimum-security" facility). The hospital will notify the Probate Court that a respondent has "escaped." The Court, in turn, notifies the Sheriff's Department, which will make an attempt to locate the respondent. If the respondent is considered to be dangerous, family members and others who might be affected will be notified.

This chapter and the previous one have already considered several other ways by which a respondent may be released prior to a formal judicial hearing. Most of the persons who become involved in the initial stages of involuntary civil commitment in Columbus are diverted from compulsory hospitalization, either to community resources or voluntary hospitalization. Also, the promptness of judicial hearings diminish the use of many prehearing remedies that are available to a respondent.

## E. CONCLUSIONS AND RECOMMENDATIONS

The strengths clearly outweigh the weaknesses of procedures in the Columbus involuntary civil commitment process, in the period after a respondent is taken into custody and while he or she is in the hospital awaiting a court hearing. Legal safeguards and protections afforded the respondent are balanced with treatment considerations and interests of economy and efficiency. This chapter concludes by addressing the various strengths and weaknesses in the prehearing hospitalization stage of commitment and by making a number of specific recommendations for improvement. As in the previous chapter, recommendations for improvements are interspersed in the text, preceding or following supporting commentary.

### Prehearing Treatment

The treatment of respondents who are involuntarily hospitalized before a judicial hearing is an issue that raises little controversy in Columbus. In practice, most respondents are medicated and provided other types of therapies shortly after they are admitted to the hospital. Except for their legal status, and some of the hospital staff's trepidations about that status and related liability threats, respondents hospitalized on court order are treated essentially the same as any other patients.

RECOMMENDATION: THE POLICIES OF CENTRAL OHIO PSYCHIATRIC HOSPITAL AND PRIVATE MENTAL HEALTH FACILITIES REGARDING APPROPRIATE TREATMENT OF RESPONDENTS ADMITTED INTO EMERGENCY OR JUDICIAL HOSPITALIZATION SHOULD BE CLARIFIED. THESE POLICIES SHOULD BE INFORMED BOTH BY LEGAL OPINION REGARDING THE LIABILITY OF TREATMENT PROVIDERS IMPLEMENTING THESE POLICIES, AND BY MENTAL HEALTH PERSONNEL'S OPINION ABOUT THE APPROPRIATENESS OF CRISIS TREATMENT. IT IS FURTHER RECOMMENDED THAT THE OHIO DEPARTMENT OF MENTAL HEALTH DRAFT AND THE OHIO LEGAL RIGHTS SERVICE REVIEW THESE POLICIES.

RECOMMENDATION: UPON FIRST MEETING WITH THEIR CLIENTS, RESPONDENTS' ATTORNEYS SHOULD FAMILIARIZE THEMSELVES WITH THE TYPE OF PREHEARING TREATMENT GIVEN TO THE RESPONDENT, ESPECIALLY WHEN THE TREATMENT CONSISTS OF MEDICATION THAT IS LIKELY TO AFFECT THE RESPONDENT'S DEMEANOR DURING THE PROBABLE CAUSE HEARING.

Whether or not a respondent is medicated may have legal, as well as therapeutic relevance. On one hand, a respondent who is medicated properly will often make a better appearance before a referee during judicial hearings. On the other hand, medication, especially over-medication, may work to the detriment of the case against judicial hospitalization. Medication may cloud a respondent's thinking and diminish his or her ability to assist counsel. And, some medication even when properly prescribed and administered may give respondents the appearance of being mentally ill, which, of course, would work against them during judicial hearings.

### Mental Health Examinations

Taken as a whole, the mental health examinations provided to respondents before judicial hearings--prescreening, hospital examination at the time of admission, examination by a court expert, and examination by an independent expert--constitute a significant strength in the Columbus system. The protection that these examinations provide against improper involuntary hospitalization is substantial. The prescreening examination is performed at the very early stages of the involuntary civil commitment process and provides adequate opportunities for diversion from compulsory hospitalization. Prompt and reliable decision-making appears to be the rule rather than the exception. The legislative intent in Ohio law for the provision of an independent examination is adequately complied with in practice. Such independent examination is provided for in the laws of many states but rarely occurs in practice as it does in Columbus. Given the enormous influence that examiners have in commitment cases, this automatic provision of an independent examination is commendable both from the point of view of a check on the validity of decisions regarding compulsory hospitalizations and an increase in the confidence in diagnosis and appropriate treatment.

On the negative side, the examinations may be redundant and their results underutilized. The prehearing examination process probably could be better coordinated and be economized without lowering safeguards against improper hospitalization.

RECOMMENDATION: THE PROBATE COURT SHOULD MAKE MUCH GREATER USE OF THE INFORMATION THAT IS ACQUIRED IN THE PRESCREENING EXAMINATION BY THE COMMUNITY MENTAL HEALTH CENTER, THE EXAMINATION UPON HOSPITAL ADMISSION, AND THE EXAMINATIONS BY THE COURT AND INDEPENDENT EXPERT.

Assuming that the court would require (we do not, necessarily, recommend this) that each of these examinations result in a 2-3 page report provided to the court and attorneys, it would seem unlikely that the Court and attorneys would have insufficient data to test the allegations of the affidavit. Apparently, however, only the prescreening report supporting an affidavit typically becomes a part of the court record. The court examiner and the independent examiner do not file written reports. Thus, although three examinations of the respondent have been performed, only the results of one of these (the prescreening report) is a matter of record at the start of judicial hearings. And, as has been discussed elsewhere in this report, the limited time respondents' attorneys have available to them for conferences with the examiners before hearings often does not allow the full exploration of their examinations until they present oral testimony at the hearing. Interests of economy and efficiency seem to dictate that the court either make full use of the examinations it requires by the filing of written reports or reduce the examinations it requires in practice.

RECOMMENDATION: ONCE THE INTEREST OF CHECKING THE VALIDITY AND RELIABILITY OF COMMITMENT DECISIONS IS SATISFIED, THE COURT SHOULD COORDINATE AND COMPILE THE RESULTS OF THE VARIOUS PREHEARING EXAMINATIONS, IN THE BEST INTERESTS OF THE RESPONDENT'S TREATMENT, BY MAKING THESE RESULTS AVAILABLE TO THE HOSPITAL TREATMENT TEAM.

The independence of the various examinations serves to test the allegations and arguments for and against compulsory hospitalization. Once the test has been conducted, however, independence serves no further purpose and access to all information for the possible purposes of proper treatment becomes a primary interest. Would the prescreening report, with its detailed account of the respondent's behavior in the community and a description of his or her mental condition at the time he or she was taken into custody, be of use to the treating psychiatrist? Would the second and third opinion of the court and independent experts be of further value? Although we did not question hospital officials as to their receptivity to such information, logic would dictate that such information would be valuable, especially in view of the fact that the prescreeners' and examiners' competencies were unquestioned by those we interviewed.

RECOMMENDATION: IN THE INTERESTS OF ECONOMY AND EFFICIENCY, THE COURT SHOULD GIVE STRONG CONSIDERATION TO COMBINING THE PRESCREENING EXAMINATION AND THE EXAMINATION CONDUCTED BY THE COURT EXPERT, THEREBY ELIMINATING THE REQUIREMENT OF ONE OF THESE EXAMINATIONS.

Several attorneys and referees, pointing to the redundancy of the examination results provided by the independent expert and the court expert, recommended the elimination of one examination. Only one, however, recommended the elimination of the independent examination. We would recommend the retention of the independent examination, whether or not requested by the respondent or his or her counsel. We do, however, recommend that the examination performed by the court expert, as presently construed, be supplanted by the combination of the prescreening examination and that performed by hospital psychiatrists or social workers at admittance. By all accounts, the prescreening examination is thoroughly and diligently conducted. In our opinion, a combination of a prescreening examination and examination performed at the hospital would withstand legal scrutiny because the statutes seem to provide great latitude to the courts in providing prehearing examination. The cost benefits of eliminating one examination are obvious. We do acknowledge, without criticism, the resistance of the medical community to supplanting one examination, especially when its replacement involves not one of its own but a practitioner from another discipline, i.e., a social worker. In support of the recommendation, however, it should be noted that the superiority of medical opinion and court-ordered mental health examinations in the commitment context has not been empirically demonstrated.

The following three recommendations concern matters that probably should be considered regardless of the foregoing recommendations. They concern the timing of examinations, warnings and explanations provided to the respondent before examinations, and the disclosure by examiners of their sources of information.

RECOMMENDATION: EXAMINERS SHOULD BE REQUIRED TO COMPLETE THEIR EXAMINATION SUFFICIENTLY IN ADVANCE OF JUDICIAL HEARINGS TO ALLOW COUNSEL ADEQUATE TIME TO CONSIDER THE RESULTS OF THE EXAMINATION IN PREPARING THE CASE FOR JUDICIAL HEARING.

Some attorneys complained that the examinations performed by the independent expert and the court expert were performed just prior to the judicial hearing, either giving no time for including the results of the examination in the preparation of the case, or giving just enough time to converse briefly with the examiner immediately prior to the judicial hearing. The speed and promptness with which the Probate Court provides judicial hearings is a strength in the Columbus system of involuntary civil commitment. In recognition of the fact that there may be little time between giving notice to the examiners that an examination is requested and holding the judicial hearing, we cannot be too critical of the examiners for conducting the examination immediately prior to the judicial hearing. However, we encourage the Probate Court to make the request for examination as soon as possible, and further encourage the court to urge examiners to complete their examination at least eighteen hours before judicial hearing whenever possible. Currently, it seems merely a matter of habit to put off examinations until the day of the hearings. It may be possible to do many of them sooner if the Court requires this.

RECOMMENDATION: THE COURTS SHOULD URGE EXAMINERS TO TAKE TIME AND CARE TO EXPLAIN TO EVERY RESPONDENT THE NATURE AND PURPOSE OF THE EXAMINATION, ITS PLACE IN THE COMMITMENT PROCESS, AND THE LIKELY CONSEQUENCES OF THE EXAMINATION.

Ohio law does not provide the respondent the right to remain silent during court ordered examinations, nor does it require that examiners disclose the purpose, nature, and consequence of the examination process (cf. In re Winstead, No. 9388 (Ohio Ct. App., 9th Dist., Jan. 9, 1980)). Nonetheless, on the basis of professional ethics we consider that such explanations should be given to every respondent before an examination, even if not required by law. Admittedly, few examiners like to begin their interactions with respondents by "reading the rights" to them. Perhaps imagining a scene in which a criminal defendant is read Miranda warnings by police while leaning against a wall with arms and legs extended, most will feel that this instantly destroys any chance for a candid exchange in an atmosphere of trust and support. On the other hand, many examiners who always make a frank disclosure and explanation, report that the respondents are pleased that an examiner levels with them. The result is an enhanced atmosphere of trust and cooperation. Ironically, the effects of an open, honest explanation (using the best skills acquired by the helping professions), are not the



negative ones that might be expected. Rather than causing the respondent to be cautious about his or her responses to the examiners, they remove all resistances and respondents speak openly. In our opinion, whenever permitted by the respondent's mental condition, a full and open disclosure of the purpose, nature, and consequence of the examination in the context of the civil commitment process is dictated by the ethical codes of psychiatrists, psychologists, and social workers alike, regardless of requirements of law. In fairness, respondents should be satisfied in their desire to know what is happening to them and why. In our experiences in other jurisdictions, few examiners, regardless of their attitude, report that respondents refuse to talk with them as a matter of legal right, although many refuse because they are either too hostile or too sick to communicate.

RECOMMENDATION: EXAMINERS WHO PREPARE WRITTEN CERTIFICATES OR REPORTS SHOULD BE REQUIRED TO INCLUDE IN THOSE REPORTS STATEMENTS INDICATING WHAT PSYCHIATRIC RECORDS AND OTHER EXAMINERS' OPINIONS THEY CONSULTED BEFORE EXAMINING THE RESPONDENT AND PREPARING THEIR CERTIFICATES AND REPORTS. THEY SHOULD INDICATE, IF POSSIBLE, WHICH OF THEIR CONCLUSIONS DEPENDS SUBSTANTIALLY ON THEIR OWN OBSERVATIONS AND THOSE WHICH PRIMARILY ECHO OR REINFORCE PRIOR CONCLUSIONS MADE BY OTHERS.

An examiner should, arguably, be able to diagnose the presence of mental aberration by examining a respondent, and perhaps by reviewing an affidavit, without consulting other examiners or their notes. If records or previous psychiatric treatments are available to examiners, as is frequently the case, this is likely to produce a strong bias in an examiner's conclusions that the respondent is mentally ill.

Mental health personnel have correctly pointed out that previous psychiatric records are necessary for an exact diagnosis of mental illness. One Ohio psychiatrist suggested that subtle, delusional thinking may be missed unless an examiner is aware of these thought processes which were brought to attention by previous examinations. We submit that while past records are frequently useful in making a differential diagnosis, it is doubtful that they are required to determine whether or not a person is mentally ill, which may be all that is necessary to satisfy requirements of law and the court. The problem, however, is not merely a legal one. As mentioned in the commentary to a previous recommendation, the examination is used for treatment purposes as well as to establish respondent's legal status. Treatment staff have a valid and important need for psychiatric histories and other examiner's opinions and records in planning treatment strategies.

Because the examinations serve both legal needs and treatment needs, a dilemma is posed. From a legal standpoint, examinations should be independent and uninfluenced by previous treatment histories and other opinions. From a treatment standpoint this information is critically necessary. This recommendation attempts to strike a balance. It allows examiners to refer to records and confer with other examiners prior to the examination as they deem necessary; but it suggests that they report the nature and extent of information that might have influenced their

conclusions about the respondent's condition. From this, the judicial determination can take into consideration whether or not current and independent evidence exists to justify a respondent's compulsory hospitalization.

#### Opportunities for Voluntary Hospitalization

Notwithstanding the difficult issues of chronically ill persons who are in and out of the "revolving door" of the hospital and the related difficulty of deciding whether a respondent possesses the mental capacity to decide to become a voluntary patient, the procedure of allowing respondents to request voluntary status in the hospital is a definite strength in the Columbus system. It makes it possible for respondents to avoid the stigma of involuntary commitment and prevent the record of a commitment hearing from becoming part of the public record. Further, it seems in the interest of economy to have the majority of respondents enter the mental health system on a voluntary basis, thereby eliminating the need for judicial resources and attorneys.

Two recommendations are made below which may alleviate, but not eliminate, the "revolving door" problem caused by the repeated three-day letter requests for voluntary admissions, and the problem of ascertaining the willingness and competency of respondents to elect voluntary admissions.

RECOMMENDATION: ATTORNEYS FOR RESPONDENTS SHOULD BE ENCOURAGED TO ASCERTAIN AND DETERMINE TO THEIR SATISFACTION THAT RESPONDENTS WHO HAVE APPLIED FOR VOLUNTARY ADMISSION TO THE HOSPITAL HAVE DONE SO WILLINGLY AND WITH SOME UNDERSTANDING.

We readily believe that hospital staff have insufficient space and resources to treat those patients who desperately need their help, that they endorse and adhere to the general policy of deinstitutionalization, and that they often discharge patients when still "warm" with symptoms of mental illness. In our observations and interviews, we found no basis for the charge that hospital staff are coercing applications for voluntary status. Nonetheless, it is not inconsistent with the entire basis of an adversarial system of civil commitment to question any short-cut of that system. We thus encourage attorneys and the court to inquire into the willingness of respondents to elect voluntary admission and to ensure that such admissions are, truly, voluntary.

Attorneys and judges in other jurisdictions have been concerned about possible abuses of voluntary admissions by mental health staff. They fear that respondents may have been pressured into making "voluntary" applications. Recently, in Chicago, a court rule has been introduced that requires counsel to certify that a patient who has requested voluntary admission did so willingly and with full understanding of the consequences of his or her action. By means of this process, judges are assured by the attorneys that the respondents are not being talked into treatment against their wishes and without a court hearing. In some cases, judges may still require the patient to come to

court so the judges can be personally satisfied that the application for voluntary admission was made willingly. We do not go so far as to recommend the type of certification process adopted by the Chicago court, but encourage attorneys and referees to be aware of the problem and to be vigilant of pressures and coercion of conversion to voluntary admissions.

RECOMMENDATION: ONLY ONE THREE-DAY LETTER REQUESTING RELEASE, FOLLOWING A CONVERSION FROM INVOLUNTARY HOSPITALIZATION TO VOLUNTARY HOSPITALIZATION MAY BE FILED BEFORE A JUDICIAL HEARING, AND ONE EACH BETWEEN ADJUDICATION OF INVOLUNTARY CIVIL COMMITMENT AT A FULL HEARING AND SUBSEQUENT REHEARINGS.

In our opinion, the statute providing for the right of voluntary patients to release (5122.03) did not intend to permit repeated nuisance filings of requests for discharge and the responding filing of affidavits by hospital staff. Given the promptness with which hearings are held in Columbus, it seems unlikely that the curtailment of unlimited requests for discharge would engender infringements of a respondent's liberty rights before a judicial determination is made. Yet, we acknowledge that this recommendation may be difficult to implement and may meet with some resistance. Statutory modifications may be necessary.

Reactions to the above recommendation by reviewers in Columbus were mixed. Several mental health practitioners endorsed the recommendation that some reasonable limit on repeated "3-day letters" be imposed. At least one attorney was strongly opposed stating that current law does not permit such limitation. Further, an attorney opposed to the above recommendation made the interesting point that the so-called revolving door syndrome may not be as bad, from the point of view of treatment, than it at first appears. She suggested that the mere fact that a respondent repeatedly changes his or her mind about release and hospitalization does not necessarily by itself constitute mental illness and the alleged undue burden imposed by the resulting repeated 3-day letters is not persuasive in justifying the above recommendation.

#### Discharge and Release

The broad powers to release a respondent, in effect at any time, is clearly a strength in the Columbus involuntary civil commitment system from the standpoint of safeguarding against improper hospitalization. On the other hand, one could argue that if prehearing procedures were conducted properly--i.e., filing of an affidavit, screening, investigation, and ex parte judicial review--the immediate release of a person once he has been taken into custody and transported to the hospital seems senseless, at least from the standpoint of economy and efficiency. As the legal and mental health communities become less concerned with improper compulsory hospitalization and more concerned with the premature release of persons from the hospital who may have no treatment alternatives, discharge and release policies may have to be reviewed. Bed space, resource allocation, and other fiscal concerns may become paramount, if they are not already so.

RECOMMENDATION: HOSPITAL FACILITIES SHOULD BE ENCOURAGED  
BY THE COURT TO COMMUNICATE CLEARLY TO THE COURT THEIR  
PREHEARING DISCHARGE POLICIES.

With this recommendation, we do not envision the development and preparation of a formal set of policy and procedural guidelines. Instead, we suggest the preparation of a memorandum by the hospital facilities that may inform and assist the court, referees, and attorneys in understanding the practice of the hospital facilities in discharging respondents before a judicial hearing.

RECOMMENDATION: THE COURT SHOULD PREPARE ITSELF FOR A  
CHANGE IN PUBLIC SENTIMENT AND CHANGES IN THE LEGAL  
AND MENTAL HEALTH CULTURE DEMANDING A SHIFT IN  
ADVOCACY FROM THE RESPONDENT TO THE AFFIANT.

Organizations have sprung up in other states (e.g., North Carolina and Wisconsin) advocating for the interests of family members of respondents in seeing that respondents are not released from the hospital. Members of these groups are frustrated with the "revolving door" of many hospital facilities and the lack of community resources, and have effectively advocated for lengthier compulsory hospitalization and tighter requirements for release of respondents to communities unprepared to accept them. Although the trend is clear, the impact on the courts is not.

In Chapter I we spoke of the balancing test typically used by the courts in determinations concerning release for involuntary hospitalization. This balancing act involves the weighing of competing interests: (1) the private, individual interests that are affected by a particular procedure or official action; (2) the community's interest in the treatment of allegedly helpless and mentally disturbed individuals; (3) the community's interest in protecting itself from those persons thought to be dangerous; and, (4) the interests of the court in not imposing undue fiscal and administrative burdens on elements of the community. In the above recommendation, we are simply expressing what we perceive as a shift in the values placed on these interests by the community as a whole.

## CHAPTER V

### COUNSEL FOR THE RESPONDENT

The legislature and courts in Ohio have recognized that the state's mental health system may not always act in what a person would consider his or her best interests. Recognition of the risks and harms that may come to a person when brought into that system has engendered a greater degree of legal review of mental health practices. The nature, conduct, and consequence of this review in involuntary civil commitment proceedings depend largely on the performance of the attorney representing the person who faces possible involuntary hospitalization.

Legal issues arise during all phases of the commitment process. Respondent's counsel typically becomes involved in civil commitment cases even before the formal judicial review takes place. Before the hearing, the attorney is responsible for explaining legal rights and options available to his or her clients. During the hearing, counsel is responsible for presenting the respondent's case and ensuring that the entire process is performed correctly and promptly from the respondent's point of view. During the period of hospitalization, the attorney may become involved in issues of patient's rights and remedies. The attorney's assistance again will be needed if the respondent is detained in the hospital for the full period of commitment and the hospital is not yet prepared to release the respondent.

Attorneys normally function in the manner that, to the best of their abilities, will effectuate their clients' goals as the clients define them. Yet, this role is brought into question when those clients are alleged to be mentally ill and their capacity to express their wishes is allegedly diminished. Whether the attorney should zealously advocate for the expressed wishes of the respondent, or pursue what he or she believes is in the respondent's best interests is one of the most frequently discussed issues in involuntary civil commitment.

#### A. THE RIGHT TO AND ROLE OF LEGAL COUNSEL

The majority of courts throughout the country have recognized the constitutional right to legal representation in civil commitment proceedings. Ohio's commitment statutes guarantees this right to its citizens (5122.05, 5122.15, 5122.141). As discussed in Chapter IV, a strength in the Columbus practice is that it follows both the letter and spirit of the Ohio law by notifying and repeatedly reminding the respondent of his or her right to counsel. The respondent's waiver of his or her right to counsel, although rare in Columbus, must be knowingly, intelligently, and voluntarily made. The Ohio Supreme Court has set standards for a valid waiver of counsel in McDuffie v. Berzzarins, 43 Ohio St. 2d 23 (1975):

The record in the Probate Court hearing must show with clarity that the petitioner knew of his right to counsel, or to appointed counsel at state expense if unable to afford counsel, and that he knew of the allowable commitment which could result

from the hearing; in short, that he was apprised of all the facts essential to a broad understanding of the whole matter. (43 Ohio St. 2d at 26.)

The role of counsel in the involuntary civil commitment process has been the subject of heated debate and a considerable amount of confusion. Ohio law, like that of most states, does not prescribe the role of counsel with any specificity.

The greatest focus of debate is the type of advocacy of the respondent rights assumed by counsel. Some endorse the role of guardian ad litem. At the extreme of this role, an attorney determines and works toward what he or she believes are the respondent's best interests, which may or may not be release from the hospital, independent of the respondent's expressed wishes or desires. Some commentators, critical of the guardian ad litem role of counsel in civil commitment proceedings, have stated that this role does not adequately satisfy the requirement of the right to effective assistance of counsel because of the potential conflict between strict adherence and zealous advocacy of a respondent's expressed desires and the guardian's perception of the "best interests" of the respondent. Indeed, it is not at all uncommon for a respondent's expressed wishes to be incongruent with the attorney's perception of what the respondent needs. The majority of commentators take the position that the proper role of counsel in commitment proceedings is one of advocacy for the respondent's wishes as the respondent defines those wishes. In this role, counsel does not substitute his or her own personal judgment for the expressed wishes of the respondent.

The education and prior experience of attorneys who represent respondents may have invested in them an attitude that is often antithetical to that of most mental health personnel. That is, the aggressive defense attorney has been schooled to place the highest regard on his or her client's expressed interests and to work diligently in achieving those interests, rather than to spend much time in counseling the client extensively about what he or she might consider the best interest of the client. The attorney may well place the greatest emphasis on his client's personal liberties with limited regard to his or her client's mental health or capacity to know or express personal wishes and choices.

Referees, attorneys, and mental health personnel in Columbus disagree among themselves whether the guardian or advocate role is most appropriate for the respondent's counsel to assume. The prevalent feeling among referees, however, is that attorneys for the respondent should act as a strong advocate in most cases. Most attorneys with whom we spoke were ambivalent. One attorney stated that he always assumes the role of a strong advocate, but suggested that other attorneys in Columbus, for the most part, assume the guardian ad litem role. He suggested that the involuntary civil commitment process and the legal culture in Columbus provide no incentive for attorneys to assume strong advocacy roles. Zealous advocacy, he stated, disrupts the normal pace of the proceedings or, even worse, offends the referees and as a result may jeopardize his or her future appointments in commitment cases. (The topic of appointments will be discussed later in this chapter.) None of the attorneys with whom we spoke endorsed the role of a zealous advocate

for release of the respondent without consideration of other alternatives or options that might be available. It was suggested that less restrictive alternatives to compulsory hospitalization should be fully explored and explained to the respondent, and only when this has been done should counsel proceed with a strong advocacy for the respondent's choices and wishes.

Although he was not pleased with the adversarial nature of the involuntary civil commitment process in Columbus, one psychiatrist stated that the role of counsel for the respondent must be one of an advocate because the adversarial process demands it. He considered it an absurd situation, however, when an attorney successfully achieves the release (inappropriate from a treatment perspective) of a respondent based on a legal technicality. It should be noted that by all indications, including our observations of both probable cause and full judicial hearings, cases dismissed due to legal technicalities are extremely rare in Columbus.

One psychiatrist, who stated that he preferred that attorneys in Columbus to play a guardian ad litem role, rather than that of a zealous advocate for the respondent's release, best characterized the dominant role of respondent's counsel in Columbus. He stated that most attorneys in Columbus, by their actions, seek a middle ground between being an advocate and a guardian ad litem. The attorneys will maintain, however, that they endorse the advocacy role. He implied that the attorneys maintain an attitude about their formal role as strong advocates, but that by taking a middle ground in practice they enable the involuntary civil commitment process in Columbus to work to the satisfaction of the legal culture.

#### B. APPOINTMENT OF COUNSEL

Consistent with Ohio case law, which requires that the right to counsel must be made available to respondents at the earliest stages of the commitment proceedings allowing sufficient time for the preparation of a defense or finding of alternatives to hospitalization (In re Fisher, 313 N.E. 2d 851 (1974)), indigent respondents in Columbus are assigned counsel at the time of the filing of an affidavit. Every respondent facing possible involuntary civil commitment is represented by counsel. The vast majority of respondents are represented by court-appointed attorneys, although some are represented by privately retained attorneys.

As discussed in the previous section of this chapter, respondents in Ohio may waive the right to counsel. In practice, however, this happens very rarely. Although valid waivers are rare, it is not uncommon for respondents to reject the assistance of counsel, sometimes because they are suspicious of the court-appointed counsel, because they feel that they can represent themselves, or they may reject counsel simply because of their confused mental state. In these cases, the referees give the respondent the opportunity to speak in his or her behalf, but usually request that the counsel sit beside the respondent to assist if necessary. This arrangement appears to be both an expedient and practical solution because it does not force the assistance of counsel upon an unreceptive client, but it does make legal assistance

available close at hand should the respondent or the court feels the need for the counsel.

Shortly following their admission to the hospital, respondents are provided the Notice of Hearing (see Appendix A) by a court bailiff, an employee of the court permanently located in Central Ohio Psychiatric Hospital. At that time, the bailiff asks the respondent whether he or she wishes to be represented by counsel, and if so, whether he or she is financially capable of employing counsel. Whether or not the respondent is financially able to employ his or her own attorney, if the respondent does not employ counsel, the Court appoints an attorney to represent the respondent as a matter of practice. The Deputy Clerk then telephones an attorney whose name is chosen from a list of private attorneys maintained by the court. Typically, the assignment is made at least one day before the scheduled judicial hearing.

Attorneys are selected and assigned on a rotating six-week basis. Most involuntary civil commitment cases are disposed of within the appointment time of counsel. If, however, a case is pending at the end of the six-week period of the counsel's appointment, the same attorney will continue with the case until disposition of the case. At the end of a full judicial hearing, regardless of the disposition of a case, the Court will release the counsel from his responsibilities in the case. Respondents at rehearings are assigned counsel in the same manner as in new cases.

Attorneys eligible for appointment in civil commitment cases in Columbus are private attorneys selected by the Probate Court Judge. Apparently, no formal qualifications have been specified for attorneys in civil commitment cases, although most of the attorneys whom we interviewed had some prior experience with the Probate Court (e.g., law clerks). One attorney mentioned that he had no special training in mental disability law or mental health and that he felt totally unprepared upon his initial encounter with the involuntary civil commitment process in Columbus.

One attorney uncritically characterized the method of appointing respondents attorneys in Columbus as one of patronage, with the control to make appointments residing with the Franklin County Probate Judge. Another attorney stated that the court-appointed lawyers are "hand-picked" by the Probate Judge, and suggested that it is in the judge's best interests to select competent attorneys since the appointments will reflect on him and, ultimately, influence his chances for re-election.

In general, criticism of respondent attorneys in Columbus was minimal and it is our opinion attorneys do an adequate job in representing their clients. Our observations of attorneys' performances during hearings and our judgments, based upon personal interviews with many of the actors in the Columbus involuntary civil commitment system, indicate that most attorneys are conscientious about carrying out their responsibilities.

Attorneys are remunerated by the Probate Court at the rate of \$50 per case per hearing. One attorney, who did not represent



respondents as a court-appointed lawyer, felt that this fee was too low, considering the time and effort required to prepare and present a proper defense in civil commitment cases. Another attorney, expressing what appeared to be the prevailing attitude among court-appointed attorneys, stated that the fees were reasonable and fair.

A subtle positive influence on court-appointed attorneys in Columbus seemed to be a sense of camaraderie among the attorneys, which has been at least partly developed by the Probate Judge by means of "compulsory" luncheon meetings during which expectations of the Court are communicated and mental health cases are discussed. While a few of the attorneys joked about these meetings in a light-hearted manner, all of the attorneys to whom we spoke apparently considered them worthwhile.

### C. ADEQUACY OF LEGAL COUNSEL

Ohio law requires not just the availability of counsel, but implies the provision of competent and effective counsel by mandating that counsel be provided with all information necessary to prepare a case (5122.15), by giving respondents the right to communicate freely with and be visited at reasonable times by counsel (5122.29), and by generally, giving attorneys a free reign in preparing a case for civil commitment hearing. There is a multitude of important activities to be performed by counsel for the respondent before judicial hearing, including: informal and formal fact gathering, interviewing the respondent, mental health examiners, treating mental health personnel, hospital staff, witnesses, family, and friends of the respondent, and defining a course of action. Based on all of these activities, the conscientious and competent attorney also seeks and pursues less restrictive alternatives to compulsory hospitalization that are available for the respondent.

Attorneys on the court-appointed list in Columbus typically receive their case assignments by telephone from the Deputy Clerk of the Court one to two days before a scheduled hearing. One attorney, for example, stated that he may receive his assignments at 4:00 pm on Wednesday for cases scheduled for hearings on Friday morning. Several attorneys stated that the time between case assignment and the probable cause hearing gives them little time to prepare for the case. Treatment options less restrictive than Central Ohio Psychiatric Hospital are not adequately explored, said one attorney. Another complained about his inability to meet with the independent and court examiners prior to the hearing due to the fact that the examiners often conduct mental health examinations literally minutes before the hearing. Also, according to one attorney, some court examiners assume an attitude suggesting that they bear a responsibility only to the Court. Thus, they do not go out of their way to cooperate with respondents' attorneys. The inaccessibility of the examiners before the hearing is, apparently, especially frustrating to the attorneys when questions of a technical nature arise from the review of a respondent's medical charts.

Once the attorney has received his case assignments, often before interviewing the respondent, the attorney reviews the hospital medical chart. The chart may include the admitting record or "face sheet," a voluntary admission form, records of psychiatric examinations, psychiatric histories, medical examinations, treatment plans and,

importantly, past and present medications. According to Ohio law, all relevant hospital records must be made available to counsel with the consent of the respondent (5122.15). The policy of at least one private facility (Harding Hospital) tracks the law closely: attorneys representing respondents detained in Harding Hospital gain access to hospital records only upon the written consent of the respondent. This policy has apparently frustrated some attorneys in the past, and the administrators of Harding Hospital expressed their own misgivings. Harding Hospital's policy is in contrast with that of Central Ohio Psychiatric Hospital, where access to respondents' records is unrestricted except in rare cases when ward staff or psychiatrists unfamiliar with the court-appointed attorneys resist their attempts to gain access to hospital records. One attorney who has represented respondents in civil commitment proceedings in Columbus for several years, stated that he has never been asked about a consent to access to records in Central Ohio Psychiatric Hospital, although such consent is mandated by law.

According to the Deputy Clerk of the Probate Court and several attorneys, court records relevant to the case are frequently reviewed by attorneys. However, this practice apparently is not universal among attorneys in Columbus.

An important aspect of the representation provided by appointed attorneys in Columbus is their practice of interviewing the respondent, almost without exception, when the respondent is available before the judicial hearing. Typically, the interview lasts about ten to sixty minutes, according to attorneys, and is conducted the evening before the hearing or just before the hearing on the day the hearing is scheduled. If hearings do proceed without counsel having interviewed the respondent before the start of the hearing, such occurrences appear to be rare.

One attorney, who believed that his interviews of respondents are typical, explained that he first attempts to establish good communications in his interview with the respondent. He then probes into family background, reads the particulars of the affidavit to the respondent, and asks the respondent to explain the circumstances surrounding his or her commitment. He then may question the respondent about his or her needs and intentions if he or she were discharged immediately. Finally, at some point during the interview, the attorney explains the court process and legal rights to the respondent. The attorney who explained this method of interviewing admitted that he usually had insufficient time to explore less restrictive alternatives to compulsory hospitalization before a probable cause hearing and, hence, is ill-equipped to explain such options to the respondent.

At this stage, the attorney may wish to talk with the mental health examiners and those individuals likely to be adverse to the respondent's case. As mentioned above, the independent examiners are available to speak with the attorney but often will not have examined the respondent until shortly before the hearing. Criticisms of inaccessibility due to the lateness of the mental health examination performed were leveled at the court examiners by several attorneys.

The affiant also is a potentially adverse witness that the attorney may wish to interview. In practice, however, the attorneys we interviewed stated that interviews with affiants were rare due to their inaccessibility before the hearing, their refusal to talk with the respondent's counsel, and the short amount of time before hearings are held. Several attorneys reported being particularly frustrated by the inaccessibility of affiants before probable cause hearings because affidavits often are vague and affiants are not required to be present at probable cause hearings for cross-examination.

With some notable exceptions, attorneys who represent respondents in civil commitment cases in Columbus are well regarded by those individuals we interviewed. Members of the local bar tended to give these attorneys good to high marks in competence and case preparation. Some attorneys, however, were mildly critical of themselves and their peers. One attorney admitted that he began his representation of civil commitment cases with little training or experience, made many mistakes, and only lately gained an appreciation and sensitivity to the plight of his clients. He said he doubted that many of his colleagues had much sensitivity to the respondents' real problems.

Several mental health workers were critical of the legal counsel for respondents in Columbus, as well. One mental health advocate considered the legal representation of respondents to be poor. This individual was quick to point out, however, that the criticism was based more on philosophy than observed practice. Another mental health worker faulted the attorneys for not adequately attending to options and alternatives to hospitalization for their clients. Interestingly, several hospital staff members criticized the attorneys for being "out of touch" with emerging trends in mental health law and the treatment of the mentally ill. They claimed that some of the attorneys in Columbus appear to be unaware of the prevailing policy of deinstitutionalization, thinking instead that hospitals are still in the business of keeping patients as long as possible.

#### D. CONCLUSIONS AND RECOMMENDATIONS

The provision and prompt availability of legal representation for persons involuntarily hospitalized in Columbus is a strength in the commitment process, protecting the respondent from wrongful hospitalization for more than a few days. As a group, court appointed attorneys in Columbus advocate conscientiously, at least initially, for respondents' expressed wishes. Given the extensive pre-screening and diversion of persons for whom compulsory hospitalization is deemed inappropriate, attorneys in Columbus have assumed roles and attitudes in their representation of respondents that appears effective, though not without room for improvement.

The short period of time available for preparation of a case before a probable cause hearing balances the respondent's right to a quick judicial review and his or her counsel's needs in the preparation of a competent defense. On short notice, access to information relevant to the case is often unavailable to attorneys. Yet, no charges of gross inadequacies of legal counsel provided to respondents were encountered in

our study. With minor adjustments and improvements, legal assistance provided to respondents in commitment in Columbus seems deserving of praise, in our opinion.

#### The Right and Role of Legal Counsel

Although the vast majority of courts throughout the country recognize a constitutional right to counsel in involuntary civil commitment proceedings, the Ohio law is laudable by guaranteeing this right to its citizens. As a group, attorneys for respondents in Columbus seem to have found a comfortable middle ground in their roles somewhere between the extremes of guardian ad litem and zealous advocate. The system works smoothly; we encountered no indications that the role assumed by the attorneys engendered even isolated cases of improper compulsory hospitalization. We found the attorneys' doubt about and questioning of their own roles in the commitment process to be a healthy attitude.

Without exception, attorneys in Columbus seem to assume the role of advocate for release of the respondent in the initial stages of the proceedings. That is, in the absence of contrary information they assume that immediate release of the respondent is the desired goal toward which their representation is aimed. With increased information about a case, however, they may relax their advocacy, as in a case, for example, in which the independent examiner is of the opinion that the respondent is in definite need of immediate compulsory hospitalization. Given that the Columbus system includes an active screening and diversion of respondents before a judicial hearing and a strong adversarial process thereafter, this seemingly prevailing role of strong-advocate-first, then guardian-advisor-later may be the best possible role for attorneys in Columbus.

RECOMMENDATION: THE COURT IS ENCOURAGED TO COMMUNICATE, WITH THE ADVICE OF THE LEGAL AND MENTAL HEALTH COMMUNITIES, THE PREFERRED ROLE FOR RESPONDENT'S COUNSEL, ESPECIALLY TO NEWLY APPOINTED ATTORNEYS.

A clearly articulated prescription for the role of respondent's counsel engenders risks. Obviously, it can become the focus of debate and controversy that does little to improve the commitment process. Nonetheless, when the preferred role is addressed in a Court memorandum, for example, the benefits outweigh the risks. The prescription need not (perhaps, cannot) give guidance as to the role of counsel, but it may provide at least general guidelines that may assist new attorneys. If nothing else, it may reflect the current practice. Also, such a memorandum can become the basis for discussion as the climate in the legal and mental health communities change. In the absence of general guidelines, it is conceivable that new attorneys must go through a needlessly lengthy time of experimenting with roles until they find the one that is acceptable and workable in practice.

#### Appointment of Counsel

The methods of appointment and retention of counsel to represent respondents in involuntary civil commitment proceedings in Columbus are

effective. The court-appointed attorneys generally are a conscientious and informed group who provide competent legal representation to respondents. The promptness of appointment of counsel, allowing for a timely (although admittedly short) preparation for a defense, is a significant strength in the Columbus civil commitment process. Finally, fee schedules for attorneys appear reasonable and fair given the (1) rotating basis of appointment, (2) the fact that the great majority of respondents are located in one place (Central Ohio Psychiatric Hospital) allowing attorneys expedient access to their clients, (3) the fact that hearings are scheduled reliably on specific predetermined dates, and (4) that several cases are heard at once.

Although the method of appointing attorneys to represent respondents has proved effective in Columbus, the success of the method depends largely upon the individual entrusted with the responsibility of selecting attorneys for court appointment, namely the Franklin County Probate Judge. The following two recommendations concern review of the appointment methods and their results.

RECOMMENDATION: THE PROBATE COURT IS ENCOURAGED TO ASSEMBLE A COMMITTEE OF REPRESENTATIVES FROM THE LOCAL BAR AND MENTAL HEALTH COMMUNITY TO REVIEW AND PROVIDE ADVICE ABOUT THE APPOINTMENT OF ATTORNEYS TO REPRESENT RESPONDENTS IN INVOLUNTARY CIVIL COMMITMENT PROCEEDINGS.

RECOMMENDATION: THE REVIEW COMMITTEE SHOULD PERIODICALLY MONITOR THE LIST OF COURT APPOINTED ATTORNEYS AND ASSIST THE PROBATE COURT IN EVALUATING COMPLAINTS OF INCOMPETENCE AGAINST ATTORNEYS ON THE LIST AND IN DEVELOPING GUIDELINES FOR THE REMOVAL OF ATTORNEYS FROM THE LIST.

Given the overall effectiveness of the current method of appointing attorneys in Columbus, it is recommended that the proposed review committee serve as an advisory group only. The proposed committee could result not only in ensuring continuing high quality legal representation but also in providing greater access to the entire community of attorneys who might be willing and able to serve as court-appointed counsel in commitment cases.

#### Adequacy of Legal Counsel

Compared to the legal representation provided to respondents in other jurisdictions, and in consideration of the small amount of time available for preparation of cases before judicial hearing, legal counsel of respondents in Columbus, in our opinion, ranges from satisfactory to very good. Based upon our observations of attorneys during hearings and interviews, it appears that the court-appointed attorneys go about their duties and responsibilities conscientiously. A strength in the representation of respondents in Columbus is the practice of interviewing respondents before the Probable Cause Hearing, whenever possible. Due in part to the short period of time available to attorneys to prepare their cases, however, a weakness in the system is the inability and failure of

attorneys to avail themselves of valuable information from pre-screeners, court and independent experts, hospital staff, and other potential witnesses.

RECOMMENDATION: THE RESULTS OF THE PRE-SCREENING INVESTIGATION AND MENTAL HEALTH EXAMINATIONS SHOULD BE PROVIDED TO RESPONDENT'S COUNSEL ALONG WITH A COPY OF THE AFFIDAVIT, AND OTHERWISE BE MADE READILY ACCESSIBLE TO COUNSEL IF NOT PRESENTED TO HIM OR HER IN WRITING.

A major shortcoming in the preparation of mental health cases by attorneys in Columbus is the inability to investigate adequately options available to respondents for less restrictive treatments than hospitalization. Further, because attorneys in Columbus will not have ample opportunities to interview affiants prior to full judicial hearings, often vaguely stated affidavits and the respondents' own explanations must suffice to inform attorneys of the circumstances of prehearing detention and hospitalization. As discussed in Chapter III, the pre-screening investigation and mental health examination conducted in Columbus appear to be, as a rule, sufficiently informative about the mental condition and circumstances in which the respondent was found, prior to custody and hospitalization. Pre-screening reports should be made available to attorneys routinely. Also, the community mental health screener conducting the investigation and mental health examination of the respondent should be accessible to the respondent's counsel and the attorney designated by the Attorney General to represent the State. The pre-screening report is particularly important given the fact that the results of examinations by the independent expert and the court expert typically are unavailable until immediately before the hearing.

RECOMMENDATION: WRITTEN STATEMENTS DESCRIBING THE RESULTS OF THE MENTAL HEALTH EXAMINATIONS CONDUCTED BY THE COURT AND INDEPENDENT EXPERTS SHOULD BE MADE AVAILABLE ROUTINELY TO THE RESPONDENT'S COUNSEL AND THE STATE'S ATTORNEY. ALTERNATIVELY, THE PROBATE COURT SHOULD REQUIRE THAT INDEPENDENT AND COURT EXAMINERS COMMUNICATE THE RESULTS OF EXAMINATIONS BY TELEPHONE AT LEAST 24 HOURS BEFORE HEARINGS.

As discussed in Chapter IV and earlier in this chapter, the results of the examinations conducted by the independent and court experts are often not available to attorneys prior to the probable cause hearing, and seldom ever in writing. The Columbus system's provision of prompt judicial hearings is laudable, though it necessarily restricts the amount of information that can be gathered and communicated before the hearing. As mentioned earlier, examiners often do not evaluate the respondent until minutes before the probable cause hearing. To address this problem, we recommended in Chapter IV that the mental health examinations of the respondent be conducted at least thirty-six hours before the hearing. This recommendation complements the earlier recommendation, insofar as it suggests that the results of the examinations be put in writing or communicated by telephone at least 24 hours before the hearing. Due to the short period of time available to

prepare a report, we do not recommend the preparation of extensive reports but, rather, the completion of a printed form prepared by the probate court to accommodate both the attorneys' need to know and the severe constraints on the examiners' time to prepare written reports. The examiners' fees should be contingent upon the completion of the forms or, alternatively, making the telephone communication prior to the probable cause hearing.

RECOMMENDATION: CENTRAL OHIO PSYCHIATRIC HOSPITAL AND THE PRIVATE HOSIPTALS IN COLUMBUS SHOULD BE ENCOURAGED BY THE PROBATE COURT TO MAKE CONSISTENT THEIR POLICIES REGARDING RESPONDENT'S COUNSEL'S ACCESS TO RELEVANT HOSPITAL RECORDS.

Ohio law provides that relevant information in the control of a hospital should be made available to the respondent's attorney with the consent of the respondent (5122.15). In practice, consent procedures are strictly enforced by some facilities but not others. Although this may be a minor problem, the inconsistency in policies may engender increased confusion and frustration among attorneys in the future. As we noted earlier in this chapter, elimination of the consent requirement will require a change in the statutes. However, even in the absence of statutory change, a consistency in policies among mental health facilities regarding attorneys' access to records is desirable.

RECOMMENDATION: GIVEN THE INFREQUENT INVOLVEMENT OF COURT-APPOINTED ATTORNEYS IN APPEALS OF INVOLUNTARY CIVIL COMMITMENTS, AND THE OTHERWISE FEW OPPORTUNITIES FOR ATTORNEYS IN COLUMBUS TO REVIEW THE LEGAL AND SOCIAL CONSEQUENCES OF THEIR REPRESENTATION IN COLUMBUS, A CONTINUING EDUCATION PROGRAM FOR COURT-APPOINTED ATTORNEYS SHOULD BE INSTITUTED AND IMPLEMENTED.

The periodic educational lunches held for court-appointed attorneys and referees by the Probate Court judge partially meet this recommendation. The realization of this recommendation does not necessarily entail, in our view, significant expenditures of resources by the Probate Court. Rather, we recommend that the continuing education be initiated and based upon a series of memoranda to court-appointed attorneys in Columbus, prepared by the Probate Court with assistance from the mental health community, the Ohio Legal Rights Service, the local bar, and other interested and informed parties. The memoranda should address specific concerns about policies and practices in the involuntary civil commitment system in Columbus (e.g., explanations and warnings given to respondents before mental health examinations, access to hospital records, and fees for court-appointed attorneys and mental health examiners).





## CHAPTER VI

### PROBATE COURT HEARINGS

Ohio law provides the individual sought to be involuntarily committed with opportunities to test the allegation in the affidavit and the validity of protracted compulsory hospitalization in three separate Probate Court hearings: probable cause, full, and continued commitment hearings. Probable cause hearings are held only upon request of the respondent or his or her counsel (5122.141); however, they are held automatically three days after the filing of an affidavit as a matter of practice in Columbus. Probable cause hearings tend to be less formal than full hearings, and Ohio's Rules of Civil Procedure are not strictly adhered to in probable cause hearings as a matter of law (5122.141, 5122.06). Also, the burden of proof in these initial judicial hearings is "probable cause," instead of the "clear and convincing" evidence required at the full hearings. Representation of the State's case during probable cause hearings need not be by an attorney according to Ohio law (5122.06), and, in Columbus, is usually a hospital social worker. Otherwise, as one attorney put it, the probable cause hearings in Columbus are "carbon copies" of the full hearings.

Full hearings are conducted in a manner consistent with due process of law and the Ohio Rules of Civil Procedure (5122.15). Full hearings must be held sometime between the thirtieth and forty-fifth day after the initial detention of the respondent unless a probable cause hearing was held in this period of time, in which case full hearings must be held within ten days from the probable cause hearing (5122.141). The rule of practice in Columbus is for full hearings to be held within ten days of the probable cause hearing, which always is held within three days of the filing of an affidavit. Continuances are infrequent.

If there has been no disposition of the case after ninety days of involuntary civil commitment of the respondent, either by discharge or a conversion to voluntary hospitalization, a judicial review hearing of continued commitment is held as a matter of law and practice in Columbus (5122.15). If the outcome of the review hearing is continued commitment, review hearings are mandatory every two years thereafter or they may be requested by a respondent every 180 days (5122.15). Only the probable cause hearing and the full hearing will be considered in this chapter. The continued commitment review hearing will be discussed in Chapter VII.

Involuntary civil commitment hearings of mental health cases in Columbus not involving criminal charges are held on Monday, Wednesday, and Friday of each week in the Central Ohio Psychiatric Hospital. The hearings commence at approximately 9:30 a.m. in a basement room set aside for hearing mental health cases. The "court room" is approximately 20 x 30 feet in size, and has several windows and two doors, one opening to the basement hallways of the hospital, the other opening to an adjoining room, with a locking door, used as a waiting room for respondents whose cases are close to being heard. At the time of our observation, the

basement courtroom was hot, stuffy, and generally uncomfortable; the acoustics in the room did not seem particularly good, although those individuals participating in the cases did not seem to be hindered.

A Referee (an attorney appointed by the Probate Court to hear involuntary civil commitment cases), a court bailiff, a court stenographer, two mental health examiners (psychiatrists), as well as an attorney representing the respondent participate in the hearings. Depending upon whether the hearing is to determine probable cause or a full hearing, the State is represented by a social worker designated by the hospital or by an attorney appointed by the Attorney General's Office.

#### A. THE PROBABLE CAUSE HEARING

Probable cause hearings in involuntary civil commitment cases in Franklin County are held promptly and reliably within three "court days" (i.e., weekdays, except holidays) from the filing of an affidavit with the probate court. These preliminary hearings are mandated by Ohio law upon request by the respondent, his or her guardian or counsel, the head of the hospital, or on the court's own motion (5122.141). The Franklin County probate court provides a probable cause hearing automatically as a matter of practice on the assumption that competent counsel always would request such procedural safeguards pursuant to the provisions of law that make them available (5122.141, 5122.05). This automatic provision of probable cause hearings is the topic of considerable debate and cause of dissatisfaction among many persons involved in the involuntary civil commitment process in Franklin County. Based upon concerns for economy and efficiency, the vast majority of attorneys, referees, and mental health personnel with whom we communicated over the course of our study called for the abolition of automatic probable cause hearings, or their provision in a modified form. A vocal minority of those we interviewed favor the retention of the current automatic provision of this hearing.

#### Arguments for Automatic Probable Cause Hearings

The issue of the right to a probable cause hearing in involuntary civil commitment proceedings has been addressed by a number of federal and state courts. A majority of these courts implicitly acknowledge the desirability of a probable cause hearing before the respondent is taken into custody and involuntarily hospitalized, but grapple primarily with arguments for and against a probable cause hearing after the respondent has already been taken to the hospital against his or her will. This acknowledgement of an ideal tempered with the realization of practice is reflected in Ohio law. That is, Ohio statute requires that "[w]here possible, the probable cause hearing shall be held before the respondent is taken into custody" (5122.141, emphasis added). Implicit in this language seems to be the acknowledgement that, as a practical matter, probable cause hearings rarely, if ever, would be held before a respondent is taken into custody. The issue, thus, turns on the question of how long a person may be involuntarily detained prior to the hearing on probable cause.

Certainly, reducing the deprivation of a respondent's liberty prior to a hearing on probable cause is the most forceful reason for providing a prompt probable cause hearing in civil commitment proceedings. It also is the strongest argument we heard for automatic probable cause hearings in Franklin County. One attorney, acknowledging the expense of conducting probable cause hearings in light of the fact that in the vast majority of cases the disposition of the case is the same, whether or not a probable cause hearing would be held, nonetheless argued strongly that the price paid is worth the check against a "massive curtailment of liberty." This attorney felt that probable cause hearings should be continued to be held three days following the filing of an affidavit, even if it were to be supplanted by a full hearing within five court days of the original involuntary hospitalization, and even if only one out of a hundred respondents were released at the probable cause hearing. In short, five days (or, to be more exact, the additional two days beyond the three days of hospitalization before probable cause hearing) of forced hospitalization without judicial review constitutes an intolerable deprivation of liberty to be avoided if at all possible, in the opinion of this attorney. Although we take issue with this argument later in this chapter, it is a strong argument not easily dismissed.

Another attorney suggested that probable cause hearings contribute to the election of voluntary hospitalizations. This attorney suggested that probable cause hearings provide an opportunity to hear medical testimony in an adversary proceeding contributing, according to his experiences, to respondents' more frequent acknowledgements of their mental disorder. "When I interview a respondent prior to a probable cause hearing," he stated, "he or she is usually reluctant to sign an application for voluntary admission. However, once psychiatric testimony has been heard, many times that same respondent is then willing to voluntarily enter the hospital prior to the commencement of the full hearing." He concluded that the "elimination of the probable cause hearing will reduce the number of voluntary applications. More respondents will be judicially hospitalized who might otherwise become voluntary patients."

Still another attorney argued for the retention of the automatic probable cause hearing on other grounds: it provided the mechanism for the expungement of all records of the involuntary civil commitment proceedings if the court did not find probable cause to believe that the respondent is a mentally ill person subject to hospitalization by court order (5122.141). Apparently, the Franklin County Probate Court has interpreted the Ohio statutes to mean that expungement cannot be ordered after probable cause has been determined, even if the respondent is released at the full hearing due to the Court's failure to find "clear and convincing" evidence. Although there are no statutory provisions for expungement after a finding of probable cause, the expungement of all records of involuntary civil commitment proceedings following discharge or release of a respondent from a hospital, regardless of how long the hospital stay, does not seem contrary to any of the provisions in Chapter 5122 of the Ohio Revised Code. The Franklin County Probate Court's procedure of rehearing probable cause for the purpose of expungement when a respondent elects voluntary admission, or is released between the

probable cause hearing and the full hearing, may be applicable as well to cases of respondents dismissed at the full hearing, or discharged from the hospital sometime after the full hearing.

Another attorney suggested that there may be monetary incentives for appointed attorneys' support of the retention of the automatic probable cause hearing. That is, because attorneys are paid per hearing, the elimination of probable cause hearings would cut deeply into their compensation.

#### Arguments Against Automatic Probable Cause Hearings

The majority of the individuals we interviewed in Columbus--referees, attorneys, and mental health personnel alike--are in favor of discontinuing the practice in Franklin County of providing automatic probable cause hearings in commitment cases. One psychiatrist (who, interestingly, represented the mental health community at the time that the probable cause provision was written into law in Ohio), expressed the attitude of the majority. He had initially hoped that the probable cause hearing would be a quick, easy, and inexpensive procedure that would, nonetheless, provide safeguards for the protection of respondent's liberty interests. He bemoaned the fact that the procedure had become the extremely complicated and expensive procedure it is in Franklin County. Although the probable cause hearing seems to have evolved in its present form out of a legitimate concern for safeguarding the legal rights of the respondent, few in Columbus appear to be happy with it in its present form.

In addition to the arguments based on concerns for economy, which were voiced by those we interviewed, various other arguments against automatic probable cause hearings, not necessarily consistent with each other, were offered:

- o A survey conducted in June 1981 by the Probate Court of 100 involuntary civil commitment cases in Franklin County found that only 2 (2%) of the cases were dismissed at the probable cause stage.
- o Given the effectiveness of the prehearing screening mechanism, the investigation of the affidavit, and the ex parte review of the affidavit and determination of probable cause (see Chapter III), the probable cause hearing has become no more than an expensive "rubber stamp" of the court's acceptance of the affidavit and issuance of a temporary order of detention.
- o The full hearing, typically held one week after the probable cause hearing, is essentially a "carbon copy" of the probable cause hearing. Attorneys representing the respondents usually do not offer new evidence, present new witnesses, nor pose new not questions for the expert witnesses to answer which might enable the Court to make a more informed decision at the full hearing.

- o A record of prior hospitalization of the respondent constitutes, as a matter of practice, prima facie evidence meeting the low burden of proof for a probable cause finding, though it does not constitute the "clear and convincing evidence" required at the full hearing. In such cases, the probable cause hearing seems ritualistic and pointless.
- o It is the policy of Harding Hospital to administer no treatment to involuntarily hospitalized persons until after a full hearing in the case. Thus, in at least one hospital, involuntary hospitalization before a full judicial hearing, whether interrupted by a probable cause hearing or not, constitutes the equivalent of preventive detention without treatment, until such time as the Court finds clear and convincing reasons for compulsory hospitalization.
- o Although the probable cause hearings are conducted in general accordance with due process standards, the inability to subpoena witnesses (especially the affiant), frustrates the respondent attorney's abilities to test the allegations in the affidavit effectively, thereby making the probable cause hearing relatively ineffective. (This problem, it should be noted, is one that can be remedied without the elimination of the automatic probable cause hearing, and thus is not a strong argument.)

Many of the interviewees in Columbus who offered arguments against the automatic conduct of probable cause hearings in commitment cases suggested that, if this preliminary hearing were eliminated, the full hearing should be held sooner than it is now, i.e., within five or seven days of the filing of an affidavit. One referee suggested that the probable cause hearing could be eliminated only if the current prescreening and diversion procedures could be maintained at the highest levels of efficiency and effectiveness.

## B. THE FULL HEARING

Earlier in this chapter and in the preceding chapters we discussed the various opportunities to test the formal and informal complaints against the individual sought to be involuntarily committed, including the pre-screening and evaluation, the review of the affidavit by the Deputy Clerk, the ex parte determination of probable cause upon receipt of the affidavit, and the probable cause hearing. The last major step in the commitment process is the full hearing which provides a full range of procedural safeguards for the respondent. This section will discuss the nature and conduct of full judicial involuntary civil commitment hearings in Columbus, including the determination of placement and treatment, when the Court finds by clear and convincing evidence that the respondent is a mentally ill person subject to hospitalization.

### Nature and Conduct of Hearing

A person is subject to continued forced hospitalization in Ohio upon completion of the full hearing only if clear and convincing evidence was presented to show that the respondent is mentally ill and has exhibited behavior that puts him or her or others at serious risk. Ohio law defines mental illness as "a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life" (5122.01). Further a person is subject to involuntary civil commitment only if he or she is determined to be mentally ill, and because of that illness:

- (1) represents a substantial risk of physical harm to himself as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
- (2) 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;
- (3) represents a substantial and immediate risk of serious physical impairment or injury to himself as manifested by evidence that he is unable to provide for and is not providing for his basic physical needs because of his mental illness and that appropriate provisions for such needs cannot be made immediately available in the community; or
- (4) would benefit from treatment in the hospital for his mental illness and is in need of such treatment as is manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or himself.

In the hearings that we observed, close tracking of the statutory elements and criteria for commitment in Ohio was minimal. That is, we did not observe, for example, attempts to establish, in sequential and systematic fashion, first that the respondent meets the statutory definition of mental illness, second that the observed behavior meets the specific criteria set forth in statute, and third, that the person exhibits behavior meeting these criteria because of his or her mental illness. With the exception of the content of some of the examiners' testimony, references to specific legal criteria and elements using the language of the law was infrequent. However, even the examiners' references to "thought, mood, perception, orientation, or memory that grossly impairs judgment" may be less attributable to a close tracking of statutory language than the use of terms and phrases which are a part of any psychiatrist's lexicon.

The individual facing involuntary civil commitment proceedings in Ohio is accorded a panoply of statutory rights in judicial hearings. Importantly, a respondent has the right to have the hearing conducted in accordance with due process of law and the Rules of Civil Procedure, although the latter are relaxed in the conduct of probable cause hearings. Other rights include: (1) the right to legal counsel, who has access to all information relevant to the case; (2) the right to an independent mental health evaluation, both at public expense if the respondent is indigent; (3) the right to attend the hearing and testify in his or her own behalf, although the respondent cannot be compelled to testify; (4) the right to keep the hearing closed to the public, except to persons having legitimate interests in the proceedings as determined by the court; (5) the right to subpoena witnesses and records, and to examine and cross-examine witnesses; (6) the right to have the court consider only reliable, competent, and material evidence; (7) the right to a full transcript and record of the involuntary court proceedings; and, (8) the right to be involuntarily committed only upon clear and convincing evidence. The last four of these rights are not strictly applicable in probable cause hearings; the Rules of Civil Procedure are relaxed, the right to subpoena witnesses is restricted, and, of course, there is a lower burden of proof (probable cause) required for continuing the involuntary civil commitment proceedings.

Hearings in Columbus are conducted promptly, well within the limits prescribed in statute. As previously discussed, probable cause hearings are conducted automatically within three court days of the filing of an affidavit. According to Ohio law (5122.141), a mandatory full hearing must be held between the thirtieth and forty-fifth day after the respondent is first involuntarily detained; however, upon completion of a probable cause hearing that resulted in a finding of probable cause, a respondent may request an expedited hearing within ten days from the Probable Cause hearing. As a matter of practice, full hearings are always held within ten days from the probable cause hearing, whether or not the respondent or counsel has requested an expedited full hearing.

At full hearings, an attorney designated by the Ohio Attorney General's office represents the State and has the burden of showing that the respondent is mentally ill and subject to hospitalization by clear and convincing evidence. Further, the state's attorney, in accordance with law, must offer evidence of diagnosis, prognosis, record of treatment, if any, and less restrictive treatment plans, if any.

The full hearings that we observed in Columbus were all conducted in accordance with due process of law and the Rules of Civil Procedure, affording the respondent in those hearings all statutory and constitutional rights. Hearings began with the referee's explanation to the respondent of his or her rights, including the right to apply for voluntary admission to the hospital at any time. Though these explanations of rights were made forthrightly and clearly by the referees, the rapid speed of delivery, formal tone, use of legal words and phrases (e.g., the word "expungement"), and the lack of an opportunity for a response by the respondent, might have minimized the effectiveness of these communications. From the explanation of rights, the hearing proceeded to opening remarks by the state's attorney and

counsel for the respondent, to the testimony and cross-examination of the court and independent examiners, the testimony and cross-examination of other witnesses including the affiant, friends, and relatives of the respondent, and finally, to closing remarks by both parties.

A respondent was present at all full hearings we observed. Testimony by the respondent was infrequent, although the counsel for the respondent typically asked the respondent if he or she wished to make a statement to the Court. Our observations did not suggest that respondents were unduly affected by medication at the time of the hearing.

During hearings, the attorneys for respondents seemed familiar with the facts of the case and acted, from the point of view of an observer of the hearings, as advocates for the respondent. As a matter of practice in Columbus, the parties stipulated to the examiners' qualifications, although cross-examination occurred as a matter of course.

#### Determination of Placement and Treatment

The Ohio law mandates that the Probate Court should concern itself at hearings not only with matters bearing on the question of whether or not to commit a person to a hospital, but also with matters of place and type of treatment. For the most part, the latter considerations are important only if a respondent is determined to be a proper subject for involuntary admission. As a matter of practice, however, information about treatment is presented concurrently with evidence bearing on the question of commitment per se.

Ohio law places the burden on the state's attorney to "offer evidence of the diagnosis, prognosis, record of treatment, if any, and less restrictive treatment plans." In determining the setting and type of treatment, the court

shall consider the diagnosis, prognosis, and projected treatment plan for the respondent and order the implementation of the least restrictive alternative and consistent with the treatment goals (5122.15).

The court may order the respondent to a hospital operated by the Department of Mental Health or to a private facility, a community mental health center, or "any other suitable facility or person consistent with the diagnosis, prognosis, and treatment needs of the respondent." However, the order for placement and treatment to any setting other than a public hospital is "conditioned on the receipt by the Court of evidence of available space in the community mental health clinical facility or inpatient unit administered by a community mental health center" (5122.15).

In practice, options and determinations of placement and treatment by the Probate Court in Columbus are severely limited. In all but rare cases, the determination is simply whether or not to commit the respondent to Central Ohio Psychiatric Hospital, or a private facility but only upon receipt of a "bed letter" certifying the willingness of a private facility to receive the respondent.



The question of a less restrictive alternative to Central Ohio Psychiatric Hospital was raised at every hearing we observed, but it was done so in a pro forma manner with little appearance of thoughtful, careful consideration of specific alternatives relevant to the particular case. Most often, the issue arose in response to questions to the examiner by the state's attorney or the respondent's counsel. Examiners were asked whether less restrictive alternatives had in fact been considered for the respondent, and whether or not such alternatives were appropriate. In the hearings that we observed, the court examiners typically responded to such questions by stating that less restrictive alternatives had been considered, and that outpatient care was inappropriate, without providing details about the specific alternatives that may have been examined or the reasons that they were ruled out as inappropriate. Seemingly, the reasoning in testimony does not flow from an analysis of existing alternatives.

In defense of the attempts of referees, attorneys, and examiners in their attempts to follow the intent of Ohio law in determining placement and treatment, it should be noted that we were told repeatedly that once a respondent has passed through the procedural nets and proceeded to a full hearing, there is no middle ground for treatment in Columbus between hospitalization and release. The legal and mental health communities in Columbus acknowledge that the less restrictive treatment alternative is attractive in concept, but that it is extremely difficult to implement in practice. Too few community-based outpatient facilities exist to meet the needs of the seriously ill in Columbus, and those that do exist seem to be providing services at capacity and are extremely reluctant (and have, apparently, refused) to receive patients upon court-order.

#### C. THE ROLES OF THE REFEREE, STATE'S ATTORNEY, AND WITNESSES

##### The Referee

Ohio law mandates that full hearings be conducted by a judge of a probate court or an attorney designated by a judge of a probate court to act as a referee (5122.15). In Columbus, referees are appointed to preside at all probable cause, full, and continued commitment review hearings. Referees are selected and appointed by the Franklin County Probate Court Judge. Only in rare cases (e.g., those involving public controversy), does the Probate Court Judge hear civil commitment cases.

Five referees, rotating on a weekly basis, hear civil commitment cases in Columbus. All five are attorneys in private practice. All five have had prior experience in the mental health system as law students or were active in the drafting of mental health legislation in Ohio. Three additional referees in Franklin County, who do not hear involuntary civil commitment cases, are full-time employees of the Probate Court, but may only be involved in the commitment process at the time of the filing of an affidavit, as discussed in previous chapters.

During hearings, the referees in Columbus take the role of a neutral trier of facts and largely depend on the counsel for the respondent and the state's attorney to establish the basis for and against involuntary civil commitment. Aside from the explanation of rights to the respondent at the opening of the hearing, the referee seldom directs questions or makes comments to the respondent. For the most part, he allows the counsel for the respondent and the state's attorney (a hospital social worker during probable cause hearings) to conduct their cases. Typically, he does not take an active role except to ask for clarification, rule on objections to the admissibility of certain evidence, and keep the proceedings moving expeditiously by asking attorneys to limit the testimony of witnesses, for example.

### The State's Attorney

As noted in the previous chapter, the official who makes the presentation of the State's case that the respondent is mentally ill and subject to involuntary commitment depends upon whether or not the hearing is for probable cause or a full hearing. In probable cause hearings, a person designated by the hospital presents the case for hospitalization (5122.06). In Columbus, a social worker designated by the hospital presents the State's case. At full hearings, an attorney appointed by the Attorney General presents the case for involuntary commitment (5122.15).

In Columbus, two attorneys, appointed by the Attorney General's office, represent the interest of the State in presenting the case for hospitalization of the respondent. Apparently, no formal qualifications are required for state's attorneys in civil commitment cases. The state's attorneys are paid on an hourly basis and, in effect, are the lowest paid individuals employed during full hearings, according to one state's attorney.

On the basis of our observations of hearings and our interviews with attorneys and mental health personnel, the state's attorneys seldom, if ever, assume the role of zealous prosecutors. Instead, state's attorneys tend to present the evidence in a neutral fashion, almost totally relying on the testimonies of the affiant and court examiner. Evidence of less restrictive treatment plans, beyond that presented in the testimonies of the court examiner and independent examiner is only infrequently offered by the state's attorney. One mental health practitioner was of the opinion that the state's attorney's presentation of the case for hospitalization was seldom as active as that presented by the counsel for the respondent against compulsory hospitalization, thereby lending a lopsided aspect to the adversarial proceedings. This opinion was, however, not supported by our, admittedly limited, observations of full hearings. The hearings that we observed were relatively well balanced.

### Witnesses

The right to the presentation of evidence and examination of witnesses during a civil commitment hearing has both constitutional and statutory bases in Ohio. In the hearings that we observed in Columbus,

witnesses were formally called, examined, and cross-examined as in any other judicial proceeding. The most important witnesses were the court and independent examiners.

Psychiatrists appointed by the Probate Court to serve as court examiners and independent examiners are assigned on a non-rotating basis to cases scheduled for hearing on specific dates. According to the opinions of those we interviewed and our observations of hearings, the court appointed examiners, as a group, are competent, thorough, and conscientious both in their examination of respondents and their testimonies during judicial hearings. Apparently, court-appointed examiners are accustomed to adversarial proceedings and quite familiar with the involuntary civil commitment process.

Similar praise was not given by attorneys and referees to treating hospital physicians sometimes called to testify at hearings. According to their critics, these physicians are unfamiliar with the civil commitment proceedings and seem to have a distinct dislike for testimony in such proceedings, claiming that they do not consider courtroom testimony as an appropriate role of their profession. In their defense, it can be pointed out that testimony introduces a significant disruption in their day, significantly reduces the amount of time they can spend with patients, and can badly harm a therapeutic relationship with their patients. Hospital physicians are typically called only in close cases where there might be significant disagreements between the court examiner and the independent examiner. No privilege attaches to the testimony of the hospital physician unless the respondent is a voluntary patient who requested to be discharged and against whom the hospital subsequently filed an affidavit for involuntary civil commitment. In the latter case, the hospital physician may not testify regarding information he obtained during the respondent's voluntary hospitalization. That is, testimony is restricted to information gathered by the physician after the affidavit for involuntary civil commitment is filed by the hospital.

The literature of mental health and the law is replete with commentaries describing the influence of psychiatric and psychological opinion on the presentation of a case by attorneys and the decisions made by the triers of fact. While the state's attorneys and respondent attorneys we interviewed in Columbus openly acknowledged their heavy reliance on the judgment and testimony of examiners (one attorney estimated that 99% of his case relied on the examiner), referees expressed the opinion that they were not unduly swayed by the examiners.

For the most part, according to the opinions of those we interviewed and our observations of hearings, the court examiner and independent examiner typically agree in their diagnoses, but tend to disagree in their prognoses and recommendations for outpatient versus inpatient care for the respondent.

The independent examiner is shielded by the doctor-patient privilege and cannot be compelled to testify. The court examiner, however, is considered the informant to the Probate Court and no privilege is attached to his testimony.

Finally, respondents are present at hearings in most cases, though they testify in their own behalf infrequently, and even more infrequently at the request of counsel. In approximately one out of ten cases is the respondent not present at the hearings. Respondents who are not present at hearings typically either refuse to appear or are bedridden. According to one respondent's attorney, respondents are no more likely to be involuntarily committed if they are not present at the hearing.

#### D. CONCLUSIONS AND RECOMMENDATIONS

The provision of court hearings conducted in accordance with due process of law and the Rules of Civil Procedure is a very significant feature of the Columbus civil commitment system. The actors in the system appear to function fairly, effectively, and efficiently within that system. In our opinion, the Probate Court deserves praise for erecting in practice the procedural and substantive safeguards in Ohio law to protect respondents during hearings. If the system has significant deficiencies, they are due to emphasis of safeguards for the respondent to the detriment of economy and efficiency. Most of our recommendations for improvements are aimed at balancing the interest of the respondent in adequate judicial review and the interest of efficiency and economy.

##### The Probable Cause Hearing

The vast majority of those we interviewed in Columbus felt that the practice in Franklin County of providing automatic probable cause hearings to all respondents in involuntary civil commitment proceedings did not sufficiently serve the liberty interests of respondents to outweigh the interests of efficiency and economy. With a change in the timing of the full hearing, a strengthening of the prescreening procedures, a meaningful investigation and review of the affidavit, and an allowance for the expungement of records upon dismissal of the case at full hearing, the automatic conduct of a probable cause hearing in every commitment case is unwarranted.

RECOMMENDATION: THE PRACTICE OF PROVIDING AUTOMATIC PROBABLE CAUSE HEARINGS IN FRANKLIN COUNTY SHOULD BE ELIMINATED.

This recommendation, arguably, takes from the respondent an opportunity to promptly test the allegations of the affidavit and eliminates a safeguard against improper compulsory hospitalization. Obviously, a replacement for this safeguard and the strengthening of other protections would make this recommendation more palatable. The following two recommendations and the discussion following them speak to this point.

RECOMMENDATION: FULL HEARINGS IN INVOLUNTARY CIVIL COMMITMENT PROCEEDINGS IN FRANKLIN COUNTY SHOULD BE HELD WITHIN FIVE DAYS OF THE FILING OF AN AFFIDAVIT.

RECOMMENDATION: PROCEDURES FOR PRESCREENING AND DIVERSION  
BY THE COMMUNITY MENTAL HEALTH CENTERS, INVESTIGATION  
OF THE AFFIDAVIT, REVIEW BY, AND THE EX PARTE  
DETERMINATION OF PROBABLE CAUSE BY THE REFEREE SHOULD  
BE ENHANCED AND STRENGTHENED.

In making the recommendation to postpone the judicial review the validity of compulsory hospitalization, even from three days to five days, we acknowledge that the arguments for these recommendations may be difficult to swallow. In the abstract, few of us would place economy, efficiency, and expediency above liberty. Once we have set in our minds, however arbitrarily, the deprivation of liberty that can be justified without a judicial review, it is difficult to retreat from that stand in making the above recommendations. We openly acknowledge this potential dilemma. We note, however, that the provision of a full hearing five days after the filing of an affidavit, as recommended, is consistent with procedures in other jurisdictions throughout the country.

With the elimination of an automatic probable cause hearing within three days and the provision of a full hearing within five, are there compensating factors that may justify the additional two days of involuntary hospitalization? The strengthening of the pre-hearing screening and review, one could argue, casts a finer net through which few cases of improper detention and hospitalization pass. The great majority of involuntary civil commitment cases that are initiated with a contact with the probate court are screened and diverted by the prescreening process to community placements. Further, assuming a careful scrutiny of the affidavit by the deputy clerk at the time of filing, and a thorough ex parte review and determination of probable cause by the "in-house" referee, another check of the validity of compulsory hospitalization is provided. Finally, the additional two days before a hearing is held may enable the counsel for the respondent to better prepare for the case, thereby reducing the chances of commitment at the five-day hearing.

The elimination of the automatic provision of probable cause hearings in Franklin County may be somewhat problematic due to the reasoning upon which the procedure is based. It is assumed that competent counsel would always request a probable cause hearing if permitted by statute. How then can the court cease providing automatic probable cause hearings and discourage attorneys, who are well aware of the assumptions upon which the automatic provision is based, from always requesting probable cause hearings? To avoid the assumption of negligence by counsel when a probable cause hearing is not requested, it might be suggested that counsel take pains in explaining to respondents their right to a probable cause hearing upon request. If in the judgment of the counsel, the respondent does not wish to pursue this right and the attorney considers that the preliminary hearing would provide few benefits to the respondent's case, counsel need not request a hearing. Failure to request a probable cause hearing would be considered negligent only if the respondent's attorney did not fully explain the right to such a hearing to the respondent, or failed to request such a hearing upon the express wishes of the respondent.

The final consideration in this concluding section concerns the expungement of records of involuntary civil commitment proceedings. As discussed earlier, it is standard practice for the Court to order the expungement of all records following the failure to find probable cause; yet, once a full hearing is initiated, the court will not order the expungement of records even if the respondent is dismissed at the hearing. The reasoning upon which this restriction of expungement is apparently based is that if the evidence is insufficient for a finding of probable cause, the expungement of records is justified; however, if the evidence is sufficient for such a finding, but not quite "clear and convincing," the Court considers this middle ground between probable cause and "clear and convincing" evidence to justify maintaining the records.

RECOMMENDATION: THE EXPUNGEMENT OF ALL RECORDS OF INVOLUNTARY CIVIL COMMITMENT PROCEEDINGS SHOULD BE MADE POSSIBLE, UPON ORDER OF THE COURT, WHEN A RESPONDENT IS DISCHARGED AT A FULL HEARING.

This recommendation is not based in any knowledge of compelling state interests in maintaining records of involuntary civil commitment hearings, or suggestions for guidelines for the court in ordering expungement of records. It is offered, simply, to lift an impediment to the elimination of the conduct of automatic probable cause hearing.

#### The Full Hearing

The timeliness, adversarial nature, and strict adherence to due process of law and the Rules of Civil Procedure are very strong features of the law and practice of the involuntary civil commitment in Columbus. The use of rules of evidence in civil procedure ensure that the hearings will be held in an orderly fashion and that the rights of respondents will be carefully protected. The considerations for improvements of the nature and conduct of full hearings in Columbus suggested below should not detract from our judgment that the manner in which hearings are conducted in Columbus is exemplary.

RECOMMENDATION: THE PROBATE COURT SHOULD SEEK FUNDS TO RENOVATE THE COURTROOM IN CENTRAL OHIO PSYCHIATRIC HOSPITAL.

Although the basement courtroom in Central Ohio Psychiatric Hospital meets the statutory requirements for a physical setting not likely to have a harmful effect on respondents (5122.141), the setting, in our judgment, is stark, uncomfortable, and almost "Kafkaesque." In our view, much could be done to renovate and invigorate the present setting for hearings without an inordinate outlay of resources or a move to another setting. The careful and orderly fashion in which the hearings are conducted in Columbus seemed incongruent with the setting in which they were conducted.

RECOMMENDATION: REFEREES ARE ENCOURAGED TO BE CONTINUALLY VIGILANT ABOUT MAINTAINING COURTROOM DECORUM.

Because of the sensitivity of the involuntary civil commitment proceedings, the respondent's alleged mental health condition, and the concern of friends and relatives who may be present at hearings, special care should always be taken to give the impression that each and every case is the most important one to the Court, instead of just one of a long series of proceedings. The above recommendation should not be construed as an admonishment aimed at the referees, attorneys, and the bailiffs in Columbus. To the contrary, we observed during hearings that special care is taken to ensure that the courtroom environment was quiet and orderly and that careful attention is given to witnesses as they testify. However, we did observe joking and conversations of a personal nature between referees, attorneys, examiners, and other courtroom employees in the time between hearings, while witnesses, friends, relatives of the respondent, and the respondent had not yet left the courtroom. While we do not consider this a serious departure from courtroom order and decorum, the referees should be sensitive to the fact that such joking and discussions may appear to make light of the seriousness of the proceedings.

RECOMMENDATION: THE PROBATE COURT SHOULD ENCOURAGE A CLOSE TRACKING OF STATUTORY CRITERIA AND REQUIREMENTS DURING THE HEARINGS.

Although many of those we interviewed in Columbus complained of the vagueness and broadness of the definitions and elements of criteria for commitment set forth in Section 5122.01 of the Ohio Revised Code, these complaints did not seem to surface at the hearings. For example, we did not observe questioning about "substantial and immediate" physical danger or "grave and imminent risk to substantial rights," nor did we hear questions directed at whether or not the alleged actions of the respondent were due to his or her mental illness. Without the hearings becoming semantic arguments, a closer tracking of statutory requirements would provide additional safeguards for the respondent and lend greater meaning to the hearings, in our opinion.

The practice in Columbus of examining and determining appropriate placement and treatment of a respondent, upon the finding that he or she is subject to involuntary commitment, falls far short of the best intentions of Ohio law. Two considerations, however, should be noted in defense of the Columbus system in this regard. First, our criticism is focused on the determinations about placement and treatment options available to the Court made during the judicial hearings. As already noted in previous chapters, the system is laudable in its screening and diverting respondents to less restrictive alternatives before they ever get to a hearing. Second, there are reasons to believe that alternatives to Central Ohio Psychiatric Hospital do not, in fact, exist in Columbus in sufficient numbers. The Probate Court should not be made to shoulder the blame for the absence of less restrictive alternatives available to respondents in Columbus. The recommendations below address considerations that concern problems beyond those that can be solved solely by the Probate Court.

RECOMMENDATION: THE PROBATE COURT, IN COLLABORATION WITH THE COMMUNITY MENTAL HEALTH SYSTEM IN COLUMBUS, SHOULD DEVELOP AND KEEP CURRENT INFORMATION ABOUT PROGRAMS IN THE COMMUNITY THAT MIGHT BE APPROPRIATE AND AVAILABLE AS LESS RESTRICTIVE ALTERNATIVES TO INVOLUNTARY COMMITMENT. IT SHOULD BE THE RESPONSIBILITY OF THE RESPONDENT'S COUNSEL AND THE PROBATE COURT TO BE FAMILIAR WITH THIS INFORMATION AND USE IT TO IDENTIFY THE LEAST RESTRICTIVE TREATMENT OPTION THAT IS APPROPRIATE AND AVAILABLE FOR RESPONDENTS.

The interviewees in Columbus were consistent in lamenting the lack of treatment and care facilities as alternatives to hospitals, jails, and release to the community. Throughout the country, we have heard statements such as these concerning the absence of less restrictive alternatives, though the concept is universally embraced. But, patient advocates, including ex-patients, are quick to respond to these statements with charges that no one has really looked too hard for alternatives. These advocates say, in essence, that there exists a myth about the absence of less restrictive alternatives. In making the above recommendation, we urge the Probate Court to examine this myth. Ideally, the court and the parties in a hearing should have before them a current list of facilities in Columbus to which commitment may be ordered. This list should provide a description of the type of facility, its capacity for care and treatment, admission policies and costs, staff capabilities, the name of its director, and its location. A liaison to any facility, even only contemplating the acceptance of court-ordered patients, might be established by efforts of the Ohio Department of Mental Health or the Probate Court.

The fact that no person or agency in Columbus in practice appears to assume responsibility for developing and maintaining current information for use by the Probate Court about community mental health programs that might function as alternatives to compulsory hospitalization is a weakness of the system. It may seem unrealistic to expect the state's attorney or the respondent's counsel to be very familiar with such alternatives. But, information about community programs could be developed and maintained by the Probate Court and made available to attorneys for use in the preparation of their cases and during hearings. Mental health personnel and agencies actively involved with the delivery of social services in Columbus should be called upon to assist in identifying community treatment programs making this information available to the Probate Court.

RECOMMENDATION: MORE ATTENTION TO AND CONSIDERATION OF TREATMENT PLANS AND LESS RESTRICTIVE TREATMENT ALTERNATIVES TO FORCED HOSPITALIZATION SHOULD BE GIVEN DURING INVOLUNTARY CIVIL COMMITMENT HEARINGS IN COLUMBUS.

As noted earlier, the considerations of less restrictive alternatives during hearings seems to be brief and superficial. Examiners may simply testify that a respondent is in need of inpatient treatment and that no less restrictive alternatives are appropriate or



available. During the hearing, testimony should be elicited as to which specific treatment alternatives were in fact considered, why these were rejected, or why the respondent is generally unsuited for an outpatient treatment program. If inpatient treatment is definitely required, attention should be given to whether or not the treatment plan submitted by the hospital specifies a less restrictive treatment that can be devised for the patient within the hospital setting. It is clearly difficult for hospital staff to provide a treatment plan that is anything more than tentative for a patient who has just been admitted for mental health treatment. Nonetheless, the Probate Court is encouraged to explore even tentative treatment plans consistent with the best intents of statute.

#### The Roles of the Referee, State's Attorney, and Witnesses

A significant strength of the involuntary civil commitment system in Columbus is the conduct of adversarial hearings. The roles of the referee, state's attorney, examiners and other witnesses in the proceedings are generally well executed within this adversarial framework. Also, from the point of view of legal protections, the respondent's presence at hearings in Columbus is a strong feature. Respondents have the opportunity to hear all allegations made about them and are able to assist in their defense to the maximum extent possible. Additionally, the referee always is able to observe the respondent and need not rely solely on the testimony of witnesses and the statements from counsel about the mental condition of the respondent. On the other hand, it can be argued that respondents may suffer emotional and mental damage by the experience of listening to relatives, friends, and doctors testifying about them. Families fear that respondents' relationship with them will suffer as a result of the courtroom experience. Also, as noted earlier, treating physicians believe that their testimony in the presence of the respondent can significantly interfere with their ability to establish a therapeutic relationship with him or her. On balance, however, it is our judgment that the presence of the respondent at hearings, given his or her counsel's good advice, tends to be a mark in favor of the Columbus system.

The assignment of several referees to civil commitment cases on a rotating basis is also a praiseworthy feature of the city's commitment system. Our interviews with several of the referees and our observations of them during hearings revealed a remarkably competent, conscientious, and fair-minded group of attorneys. They all appear to approach their part-time job presiding at involuntary civil commitment proceedings with thoughtfulness, intelligence, and enthusiasm.

The following recommendation regarding the State Attorney's function in hearings is made to coincide with earlier recommendations for the abolition of the Probable Cause hearings.

RECOMMENDATION: AN ATTORNEY, DESIGNATED BY THE STATE'S ATTORNEY, SHOULD REPRESENT THE STATE IN ALL CIVIL COMMITMENT PROCEEDINGS.

In our opinion, given the adversarial nature of the civil commitment proceedings in Columbus, a social worker representing the case for hospitalization at a probable cause hearing is an anomaly that detracts from the strength of the Columbus system--namely, the adversarial nature of the proceedings. Insofar as the social worker serves the role of an ersatz attorney, both the appearance and conduct of the hearing are less than adversarial. In our opinion, the aims of economy or informality, if those were the aims of inserting a social worker into the proceedings, are better achieved in other ways.

## CHAPTER VII

### JUDICIAL CONSIDERATIONS AFTER THE HEARING

The courts' concern for individuals involuntarily confined to mental health facilities does not end with judicial commitment hearings. Except for requests for the expungment of all records of the proceedings, for those respondents whose cases are dismissed at the completion of the judicial hearing, the courts' involvement ceases. For those respondents who are involuntarily committed, however, the court continues to be involved in reviewing contested commitments in mandatory periodic hearings, appeal from a commitment order, petitions for writs of habeas corpus, and review of institutional practices, especially questions concerning patients' rights. This chapter discusses the involvement of the Franklin County Probate Court in matters arising during the period of involuntary civil commitment following a full hearing.

#### A. PERIODIC REVIEW HEARINGS

Most jurisdictions require that the involuntary civil commitment of a person be followed by periodic administrative and judicial reviews to determine whether continued commitment is justified. According to Ohio law, a judicial review conducted according to the requirements for a full hearing must occur at the end of the first ninety days after the original commitment decision (5122.15). After this first review hearing, review hearings must be held at least every two years, except that upon request a respondent is entitled to a hearing every 180 days (5122.15). Hearings following an application for continued commitment are mandatory and may not be waived (5122.15(H)).

At least ten days before the end of the initial 90 day commitment, the affiant or the head of the hospital must file an application with the Franklin County Probate Court for the respondent's continued commitment (5122.15). The review hearings are to be conducted with the same substantive and procedural protections as those during the initial full hearing, with the exception that a respondent can be committed for a period of 180 days following a review hearing, twice the commitment period permissible at the initial full hearing.

Review hearings are relatively infrequent in Franklin County. As discussed in earlier chapters, eight out of ten respondents hospitalized by court order are subsequently discharged from the hospital or elect to become voluntary patients before a full hearing takes place; one additional respondent in this group of ten is diverted from compulsory hospitalization by the same routes before a review hearing takes place. Thus, only one out of ten persons whose involuntary civil commitment has been sought by means of a formal affidavit remains involuntarily hospitalized for the initial commitment period of ninety days. As infrequent as periodic review hearings are in Franklin County, they constitute, for all practical purposes, the total involvement of the Franklin County Probate Court with respondents following the initial full hearing.

In order to seek the continued commitment of a person, a designee of the attorney general must file an application for continued commitment at least ten days before the expiration of the commitment period (i.e., the first ninety-day period, two-year periods thereafter, or 180 day periods upon request of the respondent). The application for continued commitment must include "a written report containing the diagnosis, prognosis, past treatment, a list of alternative treatment settings and plans, and identification of the treatment setting that is the least restrictive consistent with treatment needs" (5122.15(H)). A copy of the application and supporting documents must be provided to the respondent's counsel three days before the review hearing.

According to the individuals in Columbus whom we interviewed, the periodic review hearings typically result in continued commitment. Interestingly, however, we were told by several mental health personnel that the Probate Court is reluctant to order the continued confinement of respondents, even though this appears to be the predictable result.

Although we were unable to observe review hearings during our study, we were informed that they were almost identical to the full hearings. Apparently, the statutory requirement for a written report, containing "the diagnosis, prognosis, past treatment, a list of alternative treatment settings and plans, and identification of the treatment setting that is the least restrictive consistent with treatment needs" to be filed with the Court and made available to the respondent's counsel, is not strictly complied with as a matter of practice, except when the respondent has been hospitalized in Harding Hospital. One psychiatrist stated that although the court does not require a written report at review hearings, it is the policy of Harding Hospital to provide a detailed report at such hearings. Further, the treating physician or psychiatrist at Harding Hospital typically testifies in review hearings involving patients detained in that private facility. Reportedly, testimony by the treating physician or psychiatrist at review hearings for respondents hospitalized in Central Ohio Psychiatric Hospital is infrequent, as it is in full hearings.

#### B. APPEAL, HABEAS CORPUS, AND OTHER REMEDIES

Beyond mandatory judicial review hearings, the use of legal remedies against protracted involuntary commitment is rare in Columbus. Ohio statute does not directly provide the right to an appeal from a commitment order, though it implies that such a right exists by requiring that a record be made of civil commitment proceedings (5122.15). In practice, appeals are extremely infrequent. Attorneys and referees to whom we spoke were generally unfamiliar with the process of appellate review.

Respondents are typically not informed of the possibility of an appeal from the commitment order by counsel, either before or after hearings. As provided in the Ohio statutes (5123.60), the Ohio Legal Rights Service may pursue appellate review of cases, but has done so only rarely, and then only in cases that represent possibilities for legal reform.

The infrequency of appeals in Columbus could be caused by several factors. First, appellate review is an extremely time-consuming process. As discussed throughout this report, most respondents are released from the hospital long before an appellate hearing could take place. In the opinions of legal and mental health practitioners, those respondents that face protracted involuntary commitment are clearly individuals in the most desperate need of in-patient treatment. Further, if the respondent's case presents little in the way of legal reform issues, and the respondent is discharged prior to the appellate hearing, the case may be dismissed for mootness. Another factor that may account for the infrequency of appeals is the procedure in Columbus of dismissing the counsel for the respondent upon completion of a full hearing. One referee noted that court appointed attorneys who wish to file an appeal of a commitment order would be reassigned to the case. However, none of the attorneys to whom we spoke had ever sought appellate review of a civil commitment case. In our opinion, there seem to be few incentives for attorneys to file notices of appeal given the time-consuming nature of the process, the attorneys' unfamiliarity with the appeals process, and the standard practice in Columbus of discharging the court appointed attorney from his or her responsibilities in cases upon completion of the judicial hearing. Of course, a further factor that may account for the infrequency of appeals filed in Columbus is that few cases represent problems or issues to warrant seeking this remedy.

Ohio statutes mandate the right of respondents to petition for a writ of habeas corpus (5122.30). This legal remedy to contest the civil commitment proceedings has seldom been used in Columbus.

Perhaps the most common and workable option for a respondent to seek release from continued commitment is to apply for voluntary hospitalization. According to Ohio law, the opportunity for voluntary admission is available to respondents at any time, regardless of the length of time the respondent has already been involuntarily hospitalized. The hospital must either discharge the respondent after his or her request for voluntary admission or file an affidavit with the Probate Court to retain the respondent involuntarily. This procedure is discussed in detail in Chapter IV.

#### C. JUDICIAL REVIEW OF INSTITUTIONAL PRACTICES

Once a respondent makes demands or complains about his care and treatment in the hospital, who should intervene on the respondent's behalf? Does the court need to take an active role in the institutional life of the respondent in order to balance his or her rights and those of the citizens of Columbus?

For all practical purposes, the Probate Court's involvement with a respondent ends with the order of commitment. Except in the context of periodic review hearings, institutional practices rarely come to the attention of the court. The Probate Court apparently places considerable discretion in the hands of the treating physicians, checked by hospital advocates and the Ohio Legal Rights Services, who makes their services available to patients in Central Ohio Psychiatric Hospital.

Statutes in Ohio provide a respondent a long list of rights that can be grouped into four general categories: the right to receive treatment consistent with a treatment plan, the right to a humane environment, the right to maximum freedom within a least restrictive environment, and the right to refuse unwanted treatment (5122.27, 5122.301). The Probate Court does not take an active role in the institutional life of an involuntarily committed person to ensure that his or her status and care is consistent with these rights. Many of the individuals whom we interviewed in Columbus expressed the sentiment that respondents' rights are adequately protected by hospital administrative review procedures and regulations that provide a series of informal consultations and internal checks of grievances and complaints. No periodic progress reports of treatment, as are provided in other jurisdictions throughout the country (e.g., Chicago), are required by statute or Probate Court.

#### D. CONCLUSIONS AND RECOMMENDATIONS

Mandatory review hearings conducted in accordance with due process of law are a positive feature of the Columbus involuntary civil commitment system. However, given the rarity of appeals from a commitment order, petitions for writs of habeas corpus, and other legal remedies, the lack of judicial review and oversight is, arguably, a weakness in the system.

From the standpoint of economy and efficiency, the discharge of respondents' attorneys from responsibilities in continued representation of cases following the judicial hearing may have considerable merit. From the standpoint of protection of the respondents' rights, however, this procedure can be criticized for, at the least, causing a discontinuity in a respondent's legal representation in civil commitment proceedings, and, at the worst, placing the respondent at a distinct disadvantage in seeking legal remedies for protracted commitment. One solution to the problem, of course, is to require that respondents' attorneys remain responsible for a respondent's legal representation during the commitment period. However, this requirement may prove cumbersome from an administrative point of view. Further, in other jurisdictions (e.g., parts of North Carolina) where such continued representation is a matter of law, compliance is minimal, i.e., counsel never maintain contact with their clients after commitment. However, the practice whereby an attorney is discharged from his or her responsibility to a respondent upon completion of the hearing and the respondent literally leaves the courtroom not to see that attorney again is, in our opinion, an anomaly in an otherwise strong system.

RECOMMENDATION: UPON THE COMPLETION OF A JUDICIAL HEARING AND A FINAL ORDER OF COMMITMENT, COUNSEL FOR THE RESPONDENT SHOULD NOT BE DISCHARGED FROM RESPONSIBILITIES FOR RESPONDENT'S REPRESENTATION UNTIL ALL AVAILABLE REMEDIES AND OPTIONS FOR RELEASE OR LESS RESTRICTIVE ALTERNATIVES ARE CLEARLY AND CAREFULLY EXPLAINED TO THE RESPONDENT. FURTHER, COUNSEL FOR THE RESPONDENT SHOULD NOT BE RELEASED FROM HIS OR HER RESPONSIBILITIES FOR THE RESPONDENT'S REPRESENTATION

UNTIL HE OR SHE HAS PERSONALLY COMMUNICATED THE PARTICULARS OF THE CASE TO THE OHIO LEGAL RIGHTS SERVICE AND THE HOSPITAL ADVOCATE.

By all indications, except perhaps for cases involving respondents hospitalized in private facilities, the information obtained from the hospital and the treatment team is not much greater in review hearings than during the initial judicial hearing. Reportedly, it is uncommon that members of the hospital treatment team testify at review hearings; and the written reports required by law (5122.15(H)) are seldom filed with the Court and made available to the counsel for the respondent. In our opinion, the written report of the treatment team and the testimony of a member of the team are crucial in hearings of continued commitment applications. At issue during the review hearing is not only the commitment per se but the actual treatment and treatment setting of the respondent. At the initial hearing, the court's deliberations of treatment and placement vis a vis alternative treatment settings is largely a matter of conjecture, given the short period of time that treatment had been undertaken. However, given at least 90 days of treatment history, the Court has the opportunity to test the appropriateness of continued commitment based upon specific facts of treatment. These facts should be clearly before the court.

RECOMMENDATION: A DETAILED WRITTEN REPORT, AS REQUIRED IN SECTION 5122.15(H) OF THE REVISED CODE, SHOULD BE FILED BY THE HOSPITAL AND MADE AVAILABLE TO THE RESPONDENT'S COUNSEL AT LEAST THREE DAYS BEFORE A REVIEW HEARING. FURTHER, RESPONDENT'S COUNSEL SHOULD BE ENCOURAGED TO SUBPOENA MEMBERS OF THE TREATMENT TEAM TO TESTIFY AT REVIEW HEARINGS.

From the standpoint of the liberty interests of respondents in Columbus, it is important that appellate review of cases be available, not only to allow for the review of particular cases, but perhaps more importantly, to allow for the settling of points of law that may have been interpreted differently by referees. However, from the standpoint of economy and efficiency, the time and judicial resources consumed by the appeals process in Columbus may make appeal not a workable option for respondents. Nonetheless, given the general vagueness of the Ohio statutes about the appeal process in involuntary civil commitment, and the general unfamiliarity with the process among the attorneys we interviewed, some education about the appellate review process may be warranted.

RECOMMENDATION: THE PROBATE COURT IS ENCOURAGED TO DEVELOP ONE OR MORE TRAINING SESSIONS FOR REFEREES AND ATTORNEYS ON THE RIGHT TO AND PROCEDURES FOR APPEAL OF COMMITMENT ORDERS. THE PROBATE COURT IS FURTHER ENCOURAGED TO SEEK THE ASSISTANCE OF THE OHIO LEGAL RIGHTS SERVICE IN DEVELOPING AND COORDINATING THESE TRAINING SESSIONS.

APPENDIX A. FORMS USED IN THE INVOLUNTARY CIVIL  
COMMITMENT PROCESS IN COLUMBUS

Index

Affidavit of Mental Illness . . . . .	A- 3
Affidavit (upon refusal). . . . .	A- 5
Affidavit (by social worker). . . . .	A- 6
Application for Emergency Admission . . . . .	A- 7
Case History of Mental Illness. . . . .	A- 9
Liability for Support . . . . .	A-13
Journal Entry Order Setting Hearing and Service . . . . .	A-14
Order of Detention. . . . .	A-15
Notice of Hearing or Rehearing on Affidavit . . . . .	A-17
Journal Entry Finding Probable Cause Ordering an Interim Order of Detention and Order Setting Hearing and Service . . . . .	A-19
Probate Pre-Screening Form . . . . .	A-21
Mental Status Examination Form. . . . .	A-23
Memorandum of Contact with Mental Health Center. . . . .	A-24
Rights of an Involuntarily Detained Person. . . . .	A-25
Selection of Counsel, Independent Expert and Person to Receive Notice. . . . .	A-26
Notification of Patient's Rights - Involuntary . . . . .	A-27
Certificate of Examination. . . . .	A-29
Request for Appointment of Independent Expert. . . . .	A-30
Journal Entry Appointing Independent Expert & Court Doctor. . . . .	A-31
Journal Entry Appointing Counsel. . . . .	A-32
Consent of Counsel, Independent Expert. . . . .	A-33
Order Setting Hearing and Service . . . . .	A-34
Entry Continuing Hearing. . . . .	A-35
Entry of Continued Commitment . . . . .	A-36
Journal Entry Order of Hospitalization Not to Exceed Ninety Days . . . . .	A-37
Hearing on Contested Matters. . . . .	A-38
Application to Authorize Surgery. . . . .	A-39
Journal Entry Order Dismissal and Expungement . . . . .	A-40
Final Entry of Dismissal. . . . .	A-41
Client Rights . . . . .	A-43





FRANKLIN COUNTY COURT OF COMMON PLEAS, PROBATE DIVISION

In the Matter of \_\_\_\_\_

Case No. \_\_\_\_\_

AFFIDAVIT OF MENTAL ILLNESS

The State of Ohio, Franklin County, S.S. Probate Court

\_\_\_\_\_, the undersigned, residing at \_\_\_\_\_

\_\_\_\_\_, says that he has information to believe or has actual knowledge that \_\_\_\_\_

\_\_\_\_\_ Represents a substantial risk of physical harm to himself as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;

\_\_\_\_\_ Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior or evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm;

\_\_\_\_\_ Represents a substantial and immediate risk of physical impairment or injury to himself as manifested by evidence that he is unable to provide for and is not providing for his basic physical needs because of his mental illness and that appropriate provision for such needs cannot be made immediately available in the community; or

\_\_\_\_\_ Would benefit from treatment in a hospital for his 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 himself.

Said Affiant \_\_\_\_\_ further says that the facts supporting this belief are as follows: \_\_\_\_\_

\_\_\_\_\_ These facts being sufficient to indicate probable cause that the above said person is a mentally ill person subject to hospitalization by Court order.

The name and address of patient's last physician or licensed clinical Psychologist is \_\_\_\_\_ who resides at \_\_\_\_\_; that the name and address of the patient's

legal guardian/spouse \_\_\_\_\_ is \_\_\_\_\_, who resides at \_\_\_\_\_; that the names and addresses of the competent adult next of kin of the said patient, residents of said County are as follows:

NAME	AGE	KINSHIP	ADDRESS
------	-----	---------	---------

That the following constitutes additional information that may be necessary for the purpose of determining residence: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_.

Sworn to before me and signed in my presence on the day and year above dated.

\_\_\_\_\_  
General Referee

WAIVER

I, the undersigned affiant, hereby waive the issuing and service of Notice of the hearing on said affidavit and voluntarily enter my appearance herein.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

FRANKLIN COUNTY COURT OF COMMON PLEAS, PROBATE DIVISION

In the Matter of

Case No. \_\_\_\_\_

\_\_\_\_\_  
Alleged Mentally (Ill)(Retarded)

AFFIDAVIT

I, \_\_\_\_\_, my residence being at \_\_\_\_\_  
\_\_\_\_\_, hereby declare that \_\_\_\_\_ is in  
my opinion a Mentally (ILL)(RETARDED) person subject to hospitalization  
by Court order and that said person has refused to submit to an exami-  
nation by a psychiatrist, or by a licensed psychologist and licensed  
physician.

\_\_\_\_\_

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

IN THE PROBATE COURT OF FRANKLIN COUNTY, OHIO

In the Matter of

\_\_\_\_\_  
Alleged Mentally Ill

Case No. \_\_\_\_\_

Affidavit

I, \_\_\_\_\_, a social worker employed by the Central Ohio Psychiatric Hospital, Columbus, Ohio, hereby state and subscribe to the fact that the above named respondent in these Mentally Ill proceedings has been found to have a 100% service related disability and is eligible for priority admission to the proper Veterans Administration Hospital. Affiant further states that he has had telephone verification from the Veterans Administration Hospital located in \_\_\_\_\_, Ohio, that the said hospital will accept the respondent immediately if so ordered by the Probate Court.

Further affiant sayeth not.

\_\_\_\_\_  
Signature of Affiant

The Head of \_\_\_\_\_  
(Facility Name)

*3-day letter  
or  
pink slip*

The undersigned has reason to believe that \_\_\_\_\_  
(Name of Person to be Admitted)

is a mentally ill person subject to hospitalization by court order under division B of Section 5122.01 of the Revised Code; i.e., this person

- (1) Represents a substantial risk of physical harm to himself as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm.
- (2) Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior or evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm.
- (3) Represents a substantial and immediate risk of serious physical impairment or injury to himself as manifested by evidence that he is unable to provide for and is not providing for his basic physical needs because of his mental illness and that appropriate provision for such needs cannot be made immediately available in the community.
- (4) Would benefit from treatment in a hospital for his 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 himself.

represents a substantial risk of physical harm to himself or others if allowed to remain at liberty pending examination.

Therefore, it is requested that said person be admitted to the above named facility.

STATEMENT OF BELIEF

to be filled out by one of the following: a psychiatrist, licensed clinical psychologist, licensed physician, health or police officer, sheriff or deputy sheriff.)

statement shall include the circumstances under which the individual was taken into custody and the reason for the person's belief that hospitalization is necessary. The statement shall also include reference to efforts made to secure the individual's property at his residence if he was taken into custody there. Every reasonable and appropriate effort should be made to take this person into custody in the least conspicuous manner possible.)

(Continue on reverse side)

STATEMENT OF BELIEF CONTINUED

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_

Title/Position/Badge or License Number \_\_\_\_\_

Place of Employment \_\_\_\_\_

Date & Time \_\_\_\_\_

STATEMENT OF OBSERVATION BY PSYCHIATRIST,  
LICENSED PHYSICIAN, OR LICENSED CLINICAL  
PSYCHOLOGIST, IF APPLICABLE

\_\_\_\_\_  
Place of observation (e.g., community mental health center, general hospital)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

License Number \_\_\_\_\_

Date & Time \_\_\_\_\_

APPROVED  
 Yes  No

SIGNATURE OF HEAD OF HOSPITAL  
A-8

DATE & TIME

# CASE HISTORY OF MENTAL ILLNESS

Form Prescribed by the Department of Mental Health & Mental Retardation, Division of Mental Health, in Accordance with Section 5123.08 of the Revised Code

(This information MUST accompany Medical Certificate to Superintendent of State Institution)

This form to be completed by the person making application for admission or by any other interested competent person.

1. Full name of patient .....

2. Age ..... Born. Month ..... Day ..... Year ..... Place .....

3. Race ..... Sex ..... Single ..... Married ..... Widowed ..... Divorced ..... Separated ..... Religion .....

4. Patient now resides at .....  
(Street Address) (City) (Zip Code) (County) (State)

and has lived at this address for a period of .....

5. Previous place of abode .....  
(Street Address) (City) (Zip Code) (County) (State)

Length of residence at previous place abode .....

6. If not known to be a legal residence of Ohio, give place of legal settlement .....

7. Occupation ..... When and where last employed .....

8. Education: None ..... Common School ..... High School ..... College .....

9. If patient is of foreign birth, give date and port of entry into the United States .....

10. If of foreign birth, is patient naturalized? ..... When .....

11. Who will supply clothing? .....

12. Who is responsible for cost of hospitalization .....

13. Name and address in full of person to whom correspondence is to be directed .....  
Relationship .....

14. Guardian: Name ..... Address .....

15. Name and address of family physician .....

16. Is patient an honorably discharged soldier, sailor, marine, army or navy nurse (male or female) or is patient a widow or widower, or other dependent of a deceased soldier, sailor, marine, or nurse of any war in which the United States has engaged?

17. If so state date of induction into active service of such ex-service man or woman and date, military or naval rank, and organization at time of his or her discharge; and if a dependent, state the name of the deceased ex-service man or woman upon whom such dependency is claimed:



## FAMILY HISTORY

1. Father's name ..... Birth place ..... Naturalized? .....
2. Birth date ..... Legal residence .....
3. Present address .....
4. Present state of health .....
5. If deceased, give age and cause of death .....
6. Occupation of father ..... Education .....
7. Mother's maiden name ..... Birthplace ..... Naturalized? .....
8. Birth date ..... Legal residence .....
9. Present address .....
10. Present state of health .....
11. If deceased, give age and cause of death .....
12. Occupation of mother ..... Education .....
13. Were father and mother related by blood? ..... if so, in what degree? .....
14. Wife's maiden name ..... Birth place ..... Naturalized? .....
15. Present address .....
16. Name and ages of children .....
17. Which of patients, parents, grandparents, brothers, sisters, uncles or aunts, if any (give name), ever had the following habits or diseases: mental illness, nervousness, nervous breakdown, hysteria, epilepsy, spasms, convulsions, fainting spells, sunstroke, paralysis, feeble-mindedness, mental retardation, tuberculosis, syphilis, cancer, drug addiction, alcoholic addiction or any other diseases?  
.....  
.....  
.....
18. Give name of any relative who is or who has been confined in a public or private institution (mental and nervous, correctional, county home, children's home, etc.), place and date.  
.....  
.....  
.....
19. Other pertinent facts in family history .....

## HISTORY OF MENTAL ILLNESS DEFICIENCY

20. How long have you known this person? .....

21. Have you known this person intimately? .....

22. When was the first sign of mental illness observed by you? .....

23. What was the first sign of mental illness observed by you? (Explain fully) .....

24. Was the present attack gradual or sudden in its onset? .....

25. State what leads you to believe this person is mentally ill .....

26. Has this person shown any antisocial behavior? .....

27. Was this person previously stable and well-adjusted? .....

28. Number of previous attacks of mental disorder .....

29. Has this person been a patient in any hospital, private or public, for the mentally ill or any other institution? .....

Where and how long? .....

30. Has this person suffered serious physical injury? (particularly to head) .....

31. If so, give particulars .....

32. Has this person suffered any serious illness? ..... State when and of what nature, and name and address of physician or hospital .....

33. Has this person ever had any surgical operations? ..... State when and of what nature, and name and address of physician or hospital .....

34. Has this person suffered any great mental shock or strain? .....

35. Has this person required feeding, seclusion or restraint? ..... If so, explain fully .....
- .....
- .....
36. Has this person been addicted to the use of alcohol or drugs? ..... If so explain fully .....
- .....
- .....
37. (Answer Yes or No) Is person paralytic? ..... Bedridden? ..... Untidy? ..... Violent? ..... Destructive? .....
- Excited? ..... Depressed? ..... Homicidal? ..... Suicidal? .....
38. If any of the above are true, describe .....
- .....
- .....
39. Is there any physical defect or deformity? .....
40. Has person ever suffered from syphilis? .....
- .....
41. Is person epileptic? ..... Was person feeble-minded in childhood? .....

The above information furnished by ..... Address .....

who is a ..... of the patient. This information is believed to be true to the best of his or her knowledge.  
 (State Relationship)

Date prepared ..... 19 .....

**Liability for Support**  
 Department of Mental Health and Mental Retardation  
 Section of Reimbursement Services  
 Probate Court

State of Ohio \_\_\_\_\_ Court Number \_\_\_\_\_  
 \_\_\_\_\_ County, \_\_\_\_\_ ] SS  
 Inquest of \_\_\_\_\_ Mental Illness  
 the Matter of \_\_\_\_\_ \_\_\_\_\_ Mental Retardation

To the Superintendent \_\_\_\_\_ Hospital / Institution

In accordance with Section 5121.02 of the Ohio Revised Code, I, the Judge of the Probate Court, of the County aforesaid and do certify that

Name \_\_\_\_\_  
 Street address or RFD No. \_\_\_\_\_  
 City and State \_\_\_\_\_ Zip Code \_\_\_\_\_

is the  father  husband  lawfully appointed guardian  
 mother  wife

of \_\_\_\_\_, this day committed to the aforesaid hospital / institution, who may be held liable for the support of said patient while a patient of this or any institution or hospital to which the patient may be transferred.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
 Judge of Probate Court \_\_\_\_\_  
 Per \_\_\_\_\_ Deputy

Important. In accordance with section 5123.41 of the Revised Code, the court will be rendering valuable service to the Department of Mental Health and Mental Retardation by obtaining at the time of commitment the following financial information regarding the patient and relatives.

Name of...	Age	Residence (If dead, so state)	Real Estate		Personal Property		Gross Annual Income
			Value	Debts	Value	Debts	
Patient							
Patient's Husband or Wife							
Patient's Father							
Patient's Mother							
Patient's Guardian							

Is the patient entitled to or receiving Social Security benefits? Yes \_\_\_\_\_ No \_\_\_\_\_ Claim Number \_\_\_\_\_  
 Does the patient have Medicare, Medicaid, or other hospitalization insurance? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Name and Address of Company \_\_\_\_\_ Policy Number \_\_\_\_\_  
 Is the patient entitled to any other pension or income? Yes \_\_\_\_\_ No \_\_\_\_\_ Amount? \_\_\_\_\_ Source \_\_\_\_\_

If there is any other pertinent financial information with reference to the patient or relatives please indicate below:

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
PROBATE DIVISION

In the Matter of

Alleged Mentally (Ill) (Retarded)

Case No. \_\_\_\_\_

JOURNAL ENTRY

ORDER SETTING HEARING AND SERVICE

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, an affidavit alleging  
\_\_\_\_\_ to be Mentally (Ill) (Retarded) subject to  
Court ordered hospitalization was filed in this Court by \_\_\_\_\_  
\_\_\_\_\_.

It is ordered that the hearing on the affidavit be had before this  
Court at Columbus, Ohio, on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ .M., and that written notice of said  
hearing be given by mail or otherwise to all persons entitled to notice  
under the law of the State of Ohio; and this cause is continued.

\_\_\_\_\_  
Richard B. Metcalf  
Probate Judge

# ORDER OF DETENTION

(Mental Illness, Feeble-Mindedness)

Form Prescribed by the Department of Mental Hygiene and Correction, Division of Mental Hygiene  
in Accordance with Section 5123.08 of the Revised Code  
(R. C. Sec. 5122.11, .17)

The State of Ohio, \_\_\_\_\_ County.

Probate Court

In the Matter of

\_\_\_\_\_ }  
alleged to be <sup>1</sup> \_\_\_\_\_ }

Case No. \_\_\_\_\_

To \_\_\_\_\_ of said County, Greetings:

WHEREAS, \_\_\_\_\_  
who resides at \_\_\_\_\_  
has filed in the Probate Court of said County, an affidavit alleging that \_\_\_\_\_  
\_\_\_\_\_, residing at \_\_\_\_\_,  
is <sup>1</sup> \_\_\_\_\_, and by reason of such <sup>2</sup> \_\_\_\_\_ said person is  
likely to injure himself or others if allowed to remain at liberty or needs immediate hospital treat-  
ment.

YOU ARE THEREFORE, commanded to apprehend the said person \_\_\_\_\_ and  
detain h. \_\_\_\_\_ at \_\_\_\_\_, and bring h. \_\_\_\_\_  
before me at \_\_\_\_\_, in said County, on the \_\_\_\_\_ day of  
\_\_\_\_\_ A. D. 19\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M., then and there to abide  
the order of this Court in the premises. Herein fail not, and of this writ make legal service and due  
return not later than the first business day after service is had.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of  
said Probate Court at \_\_\_\_\_, Ohio, this  
\_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_

\_\_\_\_\_  
Probate Judge

\_\_\_\_\_  
Deputy Clerk

1. "Mentally Ill", "Feeble-Minded"  
2. "Mental Illness", "Feeble-Mindedness"

COUNTY

Received this writ, 19 at o'clock, M., and on

19, I executed the same pursuant to the command of the Court.

SHERIFF'S FEES:

Service and return . . . . . 1.50

Mileage . . . . . miles, at .10 ea. . . . .

Total . . . . \$

Fee of Person Other Than Sheriff:

Service and return . . . . .

Mileage . . . . .

Total . . . . \$

By Sheriff, Police Officer, Person Appointed

Deputy Sheriff

A-16

No. ....

Docket . . . . . Page

Record . . . . . Page

PROBATE COURT

County, Ohio

ORDER OF DETENTION

Mental illness, Feeble-Mindedness

now residing or being at

For service forthwith

Time of hearing

Returned and Filed

, 19

Clerk

Deputy Clerk

By

In The Probate Court of Franklin County, Ohio

In the Matter of

No. \_\_\_\_\_

Alleged to be Mentally Ill  
Feeble Minded  
Epileptic

Notice Of Hearing Or Rehearing On Affidavit

To \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are hereby notified that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
\_\_\_\_\_, residing at \_\_\_\_\_,  
and being one of the next of kin, or a resident of Franklin County, Ohio, filed in this  
Court an affidavit alleging \_\_\_\_\_ to be  
mentally ill, feeble minded, epileptic, and that said affidavit will be for hearing before  
said Court at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

WITNESS my signature and the seal of said Court, this \_\_\_\_\_ day of  
\_\_\_\_\_ A. D. 19\_\_\_\_\_

RICHARD B. METCALF,  
Judge and Ex-Officio Clerk of the Probate Court

By \_\_\_\_\_  
Deputy Clerk.



SHERIFF'S RETURN

Sheriff's Office, Franklin County, Ohio

....., 19.....

Received this Writ on the..... day of....., 19....., at..... o'clock..... M., and on the..... day of....., 19....., I served the same by '..... a true copy thereof'..... the within named

SHERIFF'S FEES	
Service and Return, first name - \$	1.50
..... Add'l names, each 25c -	.....
Mileage, ..... miles, at 10c -	.....
.....	.....
.....	.....
Total . . .	.....

..... Sheriff.  
By..... Deputy.

AFFIDAVIT OR RETURN OF SERVICE

The State of Ohio, Franklin County.

....., being first duly sworn, says that on the..... day of....., 19..... served the within notice by..... a copy thereof, to each of the within named interested parties and that..... of said notices ha..... been returned unclaimed, to-wit:..... (Reason)

Sworn to before me and signed in my presence, this..... day of....., 19..... Deputy Probate Clerk.  
..... Notary Public.

1. Insert, "delivering," "leaving," "sending," or "mailing by 'ordinary' or 'registered' mail."  
2. Insert, "personally to," "at the usual place of residence," or "by (registered) mail to the last known address of."

FRANKLIN COUNTY COURT OF COMMON PLEAS, PROBATE DIVISION

In the Matter of

Case No. \_\_\_\_\_

\_\_\_\_\_  
Alleged to be Mentally Ill

JOURNAL ENTRY  
FINDING PROBABLE CAUSE ORDERING AN INTERIM ORDER OF DETENTION  
AND ORDER SETTING HEARING AND SERVICE

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, an affidavit alleging \_\_\_\_\_ to be Mentally Ill subject to Court ordered hospitalization was filed in this Court by \_\_\_\_\_ . The Court finds that from all the evidence presented there is probable cause to believe that the facts in the affidavit of Mental Illness are true.

It is therefore ordered that an Interim Order of Detention be issued and this matter set for a full hearing before this Court at Columbus, Ohio on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ A.M., and that written notice of said hearing be given by mail or otherwise to all persons entitled to notice under the law of the State of Ohio; and this cause is continued.

\_\_\_\_\_  
Richard B. Metcalf  
Probate Judge



Initial Contact: \_\_\_\_\_ Total Time: \_\_\_\_\_ Phone: \_\_\_\_\_ Face-to-face: \_\_\_\_\_

Name: \_\_\_\_\_ Age: \_\_\_\_\_

Address: \_\_\_\_\_ Client's Phone Number: \_\_\_\_\_

Access to Home: \_\_\_\_\_

Person Seeking Probate: \_\_\_\_\_ Caller's Phone Number: \_\_\_\_\_

Relationship of Caller to Client: \_\_\_\_\_

Reason(s) for Seeking Probate: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Medical Care (check as many as apply):

\_\_\_ Inpatient (include where, when, and why): \_\_\_\_\_

\_\_\_ Outpatient (include where, when and why): \_\_\_\_\_

\_\_\_ Physician (include who, when and why): \_\_\_\_\_

\_\_\_ Medication (include name, dosage, and why): \_\_\_\_\_

\_\_\_ Other (specify): \_\_\_\_\_

History or Present Court Involvement: \_\_\_ None \_\_\_ Yes If yes, specify: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Provider's Assessment of Client: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

mediate Interventions: \_\_\_\_\_

alternatives Involving Client and/or Significant Other(s): \_\_\_\_\_

commendations: \_\_\_\_\_

Referral(s) Made:  None  To SWCMHC  Other (specify): \_\_\_\_\_

Disposition:  Probated  Not probated

Nature of Worker: \_\_\_\_\_

Patient's Name

Observer's Name

Name

Notation Symbols

- ✓ = Determination made
- HX = History: Described but not demonstrated
- ND = No Data and cannot be inferred

		Not Present	Slight or Occas.	Marked or Frequent
APPEARANCE	1. physically unkempt, unclean.....			
	2. clothing disheveled, dirty.....			
	3. clothing atypical, unusual, bizarre.....			
	4. unusual physical characteristics.....			

COMMENTS RE APPEARANCE:

Notation Symbols

- ✓ = Determination made
- HX = History: Described but not demonstrated
- ND = No Data and cannot be inferred

		Not Present	Slight or Occas.	Marked or Frequent
PERCEPTION	32. illusions.....			
	33. auditory hallucinations.....			
	34. visual hallucinations.....			
	35. other type of hallucinations.....			

COMMENTS RE PERCEPTION:

BEHAVIOR	Feature				
			Not Present	Slight or Occas.	Marked or Frequent
BEHAVIOR	Posture	5. slumped.....			
		6. rigid, tense.....			
		7. atypical, inappropriate.....			
		8. anxiety, fear, apprehension.....			
	Facial Expression	9. depression, sadness.....			
		10. anger, hostility.....			
		11. decreased variability of expression.....			
		12. bizarreness, inappropriateness.....			
	General Body Movements	13. accelerated, increased speed.....			
		14. decreased, slowed.....			
		15. atypical, peculiar, inappropriate.....			
		16. restlessness, fidgety.....			
	Amplitude and Quality of Speech	17. increased, loud.....			
		18. decreased, slowed.....			
		19. atypical quality, slurring, stammer.....			
		20. domineering.....			
	Doctor-Patient Relationship	21. submissive, overly compliant.....			
		22. provocative.....			
		23. suspicious.....			
		24. uncooperative.....			

COMMENTS RE BEHAVIOR:

FEELING (AFFECT AND MOOD)					
		Not Present	Slight or Occas.	Marked or Frequent	
FEELING (AFFECT AND MOOD)	25. inappropriate to thought content.....				
	26. increased lability of affect.....				
	predominant mood is:				
	27. blunted, absent, unvarying.....				
	28. euphoria, elation.....				
	29. anger, hostility.....				
	30. fear, anxiety, apprehension.....				
	31. depression, sadness.....				

COMMENTS RE FEELING:

THINKING	Function				
			Not Present	Slight or Occas.	Marked or Frequent
THINKING	Intellectual Functioning	36. impaired level of consciousness.....			
		37. impaired attention span.....			
		38. impaired abstract thinking.....			
		39. impaired calculation ability.....			
	Orientation	40. impaired intelligence.....			
		41. disoriented to person.....			
	Insight	42. disoriented to place.....			
		43. disoriented to time.....			
	Judgment	44. difficulty in acknowledging the presence of psychological problems.....			
		45. mostly blames others or circumstances for problems.....			
	Memory	46. impaired ability to manage daily living activities.....			
		47. impaired ability to make reasonable life decisions.....			
Thought Content	48. impaired immediate recall.....				
	49. impaired recent memory.....				
	50. impaired remote memory.....				
	51. obsessions.....				
	52. compulsions.....				
	53. phobias.....				
	54. derealization...depersonalization.....				
55. suicidal ideation.....					
Stream of Thought (as manifested by speech)	56. homicidal ideation.....				
	57. delusions.....				
	58. ideas of reference.....				
	59. ideas of influence.....				
	60. associational disturbance.....				
	61. thought flow decreased, slowed.....				
	62. thought flow increased.....				

COMMENTS RE THINKING:

DIAGNOSIS:

as manifested by the following M.S.E. items

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
PROBATE DIVISION

In the Matter of

Case No. \_\_\_\_\_

\_\_\_\_\_  
Alleged Mentally (Ill)(Retarded)

MEMORANDUM OF CONTACT WITH MENTAL HEALTH CENTER

____ North Central	____ Jim Raia	____ Other _____
____ Columbus Area	____ Ray Bashista	____ Other _____
____ Southwest	____ Deborah Emm	____ Other _____
____ SOUTHEAST	____ Other _____	____ Other _____

\_\_\_\_ Represents a substantial risk of physical harm to himself as manifested by evidence of threats of, or attempts at, suicide, or serious self-inflicted bodily harm;

\_\_\_\_ Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior or evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm;

\_\_\_\_ Represents a substantial and immediate risk of physical impairment or injury to himself as manifested by evidence that he is unable to provide for, and is not providing for his basic physical needs because of his mental illness and that appropriate provision for such needs cannot be made immediately available in the community, or;

\_\_\_\_ "Would benefit from treatment in a hospital for his 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 himself.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Referred to this Court of the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
Deputy Clerk

FRANKLIN COUNTY COURT OF COMMON PLEAS, PROBATE DIVISION

In the Matter of

Case No. \_\_\_\_\_

Alleged Mentally (Ill)(Retarded)

RIGHTS OF AN INVOLUNTARILY DETAINED PERSON

You have the RIGHT to:

- (1) Make immediately a reasonable number of telephone calls or use other reasonable means to contact an attorney, a physician, a licensed clinical psychologist, or to contact some other person or persons to secure representation by counsel, or to obtain medical or psychological assistance, and be provided assistance in making calls if such assistance is needed and requested;
- (2) Retain counsel and have independent expert evaluation of his mental condition and, if he is unable to obtain an attorney, be represented by Court-appointed counsel and have independent expert evaluation of his mental condition at public expense;
- (3) Have a hearing, upon request, to determine whether or not there is probable cause to believe he is a mentally (ill)(retarded) person subject to hospitalization by Court order.

AFFIDAVITS OF PRESENTATION OF RIGHTS

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I read and served  
a copy of RIGHTS OF AN INVOLUNTARILY DETAINED PERSON to \_\_\_\_\_  
\_\_\_\_\_ immediately upon taking said person into custody.

\_\_\_\_\_  
Deputy Sheriff    Bailiff



IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
PROBATE DIVISION

In the Matter of

Case No. \_\_\_\_\_

\_\_\_\_\_  
Alleged Mentally (ILL) (Retarded)

SELECTION OF COUNSEL, INDEPENDENT EXPERT  
AND PERSON TO RECEIVE NOTICE

I, the undersigned person hereby select in this matter: \_\_\_\_\_

\_\_\_\_\_ whose address is \_\_\_\_\_ to

act as my counsel; \_\_\_\_\_ whose address is \_\_\_\_\_

\_\_\_\_\_ to act as my independent expert, and \_\_\_\_\_

\_\_\_\_\_ whose address is \_\_\_\_\_

\_\_\_\_\_ as a person to receive notice.

Also, that if the above parties fail to appear or consent timely in the above mentioned matter, that the Court shall appoint competent persons to act on my behalf in those capacities.

\_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I served the within selection form by handing it personally to said patient, who thereupon made the selections above indicated.

\_\_\_\_\_  
Bailiff Deputy Sheriff

Fee \_\_\_\_\_

**NOTIFICATION OF PATIENT'S RIGHTS - INVOLUNTARY**

IN ACCORDANCE WITH  
5122.05 O.R.C.

**FOR INVOLUNTARY PATIENTS ONLY**

\_\_\_\_\_ have been informed and provided with a written statement of the following rights: (Patient's name)

1. To immediately make a reasonable number of telephone calls, or to use other reasonable means to contact an attorney, a physician, a licensed clinical psychologist, or to request some other person(s) to secure representation by counsel, or to obtain medical or psychological assistance.
2. To retain counsel and to have independent expert evaluation of my medical condition, and if unable to obtain an attorney, be represented by a court-appointed counsel and have independent expert evaluation of my mental condition at public expense.
3. To have a hearing to determine whether or not there is probable cause to believe that I am a mentally ill person subject to hospitalization by court order.

**MENTALLY ILL PERSON SUBJECT TO HOSPITALIZATION BY COURT ORDER** means a mentally ill person who, because of his illness,

- (a) represents a substantial risk of physical harm to himself as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
- (b) represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior or evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm;
- (c) represents a substantial and immediate risk of physical impairment or injury to himself as manifested by evidence that he is unable to provide for and is not providing for his basic physical needs because of his mental illness and that appropriate provision for such needs cannot be made immediately available in the community; or
- (d) would benefit from treatment in a hospital for his 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 himself.

In addition, I have been informed and provided with a written statement of my personal and legal rights as a patient in this hospital.

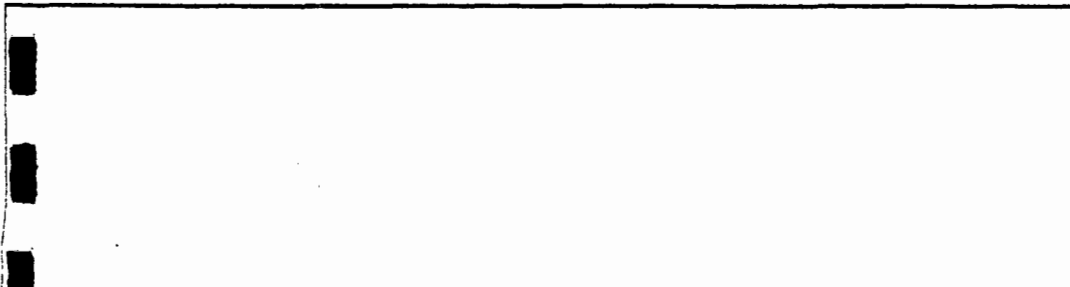
Patient's signature \_\_\_\_\_  
Date \_\_\_\_\_

Parent/Guardian's signature \_\_\_\_\_  
(if applicable) Date \_\_\_\_\_

Client Rights Advocate's signature \_\_\_\_\_  
Date \_\_\_\_\_

Admitting Person's signature \_\_\_\_\_  
Date \_\_\_\_\_

(continued on reverse side)



NOTIFICATION OF PATIENT'S RIGHTS - INVOLUNTARY

Notifications which were unsuccessful due to the patient's condition were attempted at the following times:

1st Attempt \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Client Rights Advocate

2nd Attempt \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Client Rights Advocate

3rd Attempt \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Client Rights Advocate

4th Attempt \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Client Rights Advocate

I understand the explanation of my personal and legal rights as a patient in this facility.

Patient's signature \_\_\_\_\_

Date \_\_\_\_\_

Parent/Guardian's signature \_\_\_\_\_

Date \_\_\_\_\_

Client Rights Advocate's signature \_\_\_\_\_

Date \_\_\_\_\_

MHMR-1030A (Rev. 10/78 - this side only)

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
PROBATE DIVISION

In the Matter of \_\_\_\_\_

Case No. \_\_\_\_\_

CERTIFICATE OF EXAMINATION

PERSON'S NAME      AGE      SEX      RACE      DATE OF BIRTH      PLACE OF BIRTH

PERSON'S ADDRESS (STREET, CITY, COUNTY, STATE, AND ZIP CODE)

The undersigned certifies that he is a licensed \_\_\_\_\_  
of the State of Ohio, and that the following are facts relating to the  
examination of the above-named person.

I further certify that I have with care and diligence personally observed  
and examined the named person on the \_\_\_\_\_ day of \_\_\_\_\_ in the  
year 19\_\_\_\_ A.D.

That said person was examined at \_\_\_\_\_  
and as a result of such examination, I believe said person is/is not in  
need of \_\_\_\_\_

as requested by \_\_\_\_\_  
for reasons outlined below.

REMARKS: Please indicate the condition needing attention and most desirable  
method of treatment.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

FRANKLIN COUNTY COURT OF COMMON PLEAS, PROBATE DIVISION

In the Matter of

Case No. \_\_\_\_\_

Alleged Mentally (Ill)(Retarded)

REQUEST FOR APPOINTMENT OF INDEPENDENT EXPERT

Whereupon \_\_\_\_\_ having been appointed as  
Counsel to represent the Respondent in this matter, it is requested  
that an Independent Expert be appointed to examine the Respondent and  
to report his opinion forthwith to Respondent's Counsel.

\_\_\_\_\_  
Counsel for Respondent

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
PROBATE DIVISION

In the Matter of

Case No. \_\_\_\_\_

Alleged Mentally (ILL) (RETARDED)

JOURNAL ENTRY APPOINTING INDEPENDENT EXPERT & COURT DOCTOR

Upon written request of Respondent's Counsel and it appearing to the Court that Respondent is unable to obtain an Independent Expert or is indigent, the Court hereby Orders that \_\_\_\_\_ be appointed as Independent Expert in this matter and that as Independent Expert he shall examine the Respondent and report his opinion to Respondent's Counsel forthwith.

Furthermore, the Court on it's own motion orders that \_\_\_\_\_ be appointed as Court Doctor in this matter and that as Court Doctor he shall examine the Respondent and report his opinion to the Court pursuant to Chapter 5122 of the Ohio Revised Code.

\_\_\_\_\_  
Richard B. Metcalf  
Probate Judge

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
PROBATE DIVISION

In the Matter of

Case No. \_\_\_\_\_

\_\_\_\_\_  
Alleged Mentally (Ill) (Retarded)

JOURNAL ENTRY APPOINTING COUNSEL

Upon the oral application of the above named person, and it further appearing to the Court that the said person is unable to obtain Counsel or is indigent, the Court hereby Orders that \_\_\_\_\_, Attorney at Law, Columbus, Ohio, is appointed to act as Counsel in this matter. In the event that the above captioned person is not indigent the Court reserves the right to assess costs to said person.

\_\_\_\_\_  
Richard B. Metcalf  
Probate Judge

FRANKLIN COUNTY COURT OF COMMON PLEAS, PROBATE DIVISION

In the Matter of

Case No. \_\_\_\_\_

Alleged to be Mentally Ill

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CONSENT OF COUNSEL, INDEPENDENT EXPERT

I, the undersigned person consent to act as Counsel/Independent Expert in this matter. I understand that I am retained by \_\_\_\_\_ and that compensation will come from him if \_\_\_\_\_ able to pay. In the event that the above mentioned person is indigent, I agree to be compensated to the extent permitted by the Court.

Date \_\_\_\_\_

\_\_\_\_\_  
Attorney at Law Independent Expert



IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
PROBATE DIVISION

In the Matter of

Alleged Mentally (Ill) (Retarded)

Case No. \_\_\_\_\_

JOURNAL ENTRY

ORDER SETTING HEARING AND SERVICE

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, an affidavit alleging  
\_\_\_\_\_ to be Mentally (Ill) (Retarded) subject to  
Court ordered hospitalization was filed in this Court by \_\_\_\_\_  
\_\_\_\_\_.

It is ordered that the hearing on the affidavit be had before this  
Court at Columbus, Ohio, on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ .M., and that written notice of said  
hearing be given by mail or otherwise to all persons entitled to notice  
under the law of the State of Ohio; and this cause is continued.

\_\_\_\_\_  
Richard B. Metcalf  
Probate Judge

IN THE PROBATE COURT OF FRANKLIN COUNTY, OHIO

-----

In the Matter of

Number \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

ENTRY CONTINUING HEARING

For good cause the hearing of this proceeding is continued to

\_\_\_\_\_ o'clock \_\_\_\_\_ M., on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_.

\_\_\_\_\_  
Judge of the Probate Court

IN THE PROBATE COURT OF FRANKLIN COUNTY, OHIO

In the Matter of

Alleged to be Mentally Ill

Case No. \_\_\_\_\_

ENTRY OF CONTINUED COMMITMENT

This matter came to be heard on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ upon the request of \_\_\_\_\_ for continued commitment in this matter.

The Court finds, from clear and convincing evidence, that the respondent, \_\_\_\_\_

\_\_\_\_\_  
(check one or both, whichever is applicable)

\_\_\_\_\_ is dangerous either to himself or others due to his mental illness

\_\_\_\_\_ would benefit from court ordered hospitalization due to his mental illness

The Court, therefore, orders continued commitment for the respondent at \_\_\_\_\_, the least restrictive treatment environment available to meet the respondent's needs. This commitment shall continue until the respondent requests and receives a full hearing or until the hospital requests continued commitment and there is a hearing upon such request as provided for in § 5122.15(h). The respondent may also be discharged at any time upon the determination by the hospital's doctor that he has sufficientl recovered from his mental illness. In no instance shall the respondent be held more than two (2) years from the date of this hearing without a court hearing upon the appropriateness of the respondent's continued commitment.

The Court also finds that the respondent has been informed of his right to request counsel at any time and that immediately upon his request the Court will appoint counsel for him.

Therefore, the Court further orders that the court appointed counsel in this matter be relieved of all further responsibility in this matter.

\_\_\_\_\_  
Referee -- Judge

FRANKLIN COUNTY COURT OF COMMON PLEAS, PROBATE DIVISION

In the Matter of

Case No. \_\_\_\_\_

Alleged to be Mentally Ill

JOURNAL ENTRY  
(ORDER OF HOSPITALIZATION NOT TO EXCEED NINETY DAYS)

This day this cause came on further to be heard upon the evidence presented and the Court being satisfied that said \_\_\_\_\_ is mentally ill and subject to hospitalization; that he has a legal settlement in \_\_\_\_\_ County; that he is likely to injure himself or others if allowed to remain at liberty; and that he is a suitable person for hospitalization not to exceed ninety (90) days at \_\_\_\_\_ the least restrictive (INSERT NAME OF HOSPITAL, AGENCY, OR INDIVIDUAL) alternative available and consistent with treatment goals.

The Court further finds that notice of hearing has been served or waived by all persons entitled to receive notice.

It is ordered that the above-mentioned person be hospitalized for a period not to exceed ninety (90) days in \_\_\_\_\_ permission of said \_\_\_\_\_ having (Agency or Individual) first been obtained by the Court; and that copies, under seal, of the findings in this case be transmitted to the Head of the Hospital.

It is further ordered that the aforesaid person be placed in the custody of \_\_\_\_\_, pending his removal on this order to \_\_\_\_\_.

The Court further finds that the respondent has been informed that he can request an attorney at any time in the future and that immediately upon his request the court will appoint an attorney for him.

The Court, therefore, orders that the court appointed attorney be relieved of all further responsibility in this matter.

\_\_\_\_\_  
REFEREE - PROBATE JUDGE

FRANKLIN COUNTY COURT OF COMMON PLEAS, PROBATE DIVISION

In the Matter of

Case No. \_\_\_\_\_

Alleged Mentally (Ill)(Retarded)

HEARING ON CONTESTED MATTERS

Date \_\_\_\_\_ Nature of Hearing: Mentally (Ill)(Retarded)

Attorney for Respondent \_\_\_\_\_

Attorney for Hospital \_\_\_\_\_

Other Parties Armstrong and Okey-Court Reporters

Dr. - Independent Expert

Dr. - Court Doctor

DISPOSITION

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IN THE PROBATE COURT OF FRANKLIN COUNTY, OHIO

In the Matter of

Case No. \_\_\_\_\_

APPLICATION TO AUTHORIZE SURGERY

\_\_\_\_\_, the undersigned, residing at

\_\_\_\_\_ says that he has information to

believe or has actual knowledge that \_\_\_\_\_

is in need of surgery and is \_\_\_ physically \_\_\_ mentally unable to

receive information required to enable him to give a fully informed

intelligent and knowing consent to the following surgical procedure:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned further states that said procedures are necessary to protect the general health and well-being of \_\_\_\_\_ and asks that the Court authorize the above procedures.

The undersigned further states that there is no guardian or other family member available to consent and that he has attached the opinion of the chief medical officer or attending physician and a concurring opinion by a licensed physician.

\_\_\_\_\_

FRANKLIN COUNTY COURT OF COMMON PLEAS, PROBATE DIVISION

In the Matter of

Case No. \_\_\_\_\_

Alleged Mentally (Ill)(Retarded)

JOURNAL ENTRY  
ORDER DISMISSAL AND EXPUNGEMENT

This cause came on to be heard this day upon the filing of a written affidavit of Mental (Illness)(Retardation), alleging that the above captioned person is Mentally (Ill)(Retarded) and subject to hospitalization by Court Order. The Court finds that said person has signed a Voluntary Admission, which evidences that there is no probable cause to believe the facts as stated in the affidavit of Mental (Illness)(Retardation).

It is therefore ordered that said person is discharged and this cause is herewith dismissed and the record expunged forthwith.

\_\_\_\_\_  
Richard B. Metcalf  
Probate Judge

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
PROBATE DIVISION

8

In the Matter of

Case No. \_\_\_\_\_

\_\_\_\_\_  
Alleged Mentally (Ill) (Retarded)

FINAL ENTRY OF DISMISSAL

This cause came to be heard this day upon an affidavit alleging that the above captioned person is Mentally (Ill) (Retarded), subject to hospitalization by judicial order.

The Court finds that said person has been granted final discharge from \_\_\_\_\_.

It is therefor ordered that this case be dismissed.

\_\_\_\_\_  
Richard B. Metcalf  
Probate Judge





**IMPORTANT**  
**PLEASE READ CAREFULLY**

**Client Rights**  
James A. Rhodes, Governor  
State of Ohio  
Timothy B. Moritz, M.D., Director  
Ohio Department of Mental Health  
Revised July, 1980

# Client Rights Client Rights Client Rights

Ohio Department of Mental Health

## CLIENT ADVOCATE

CENTRAL OHIO PSYCHIATRIC HOSPITAL  
MRS. PAT STIERIS  
274-7231 EXT. 2295  
MON. THRU FRI. 8:00 TO 4:30  
MAIN HALL ROOM 112  
MRS. IRENE McCLELLAND  
ADVOCATE ASSISTANT  
EXT. 2290

As a recipient of services under the direction of the Ohio Department of Mental Health and Mental Retardation, you are guaranteed certain basic rights. The Department wants you to know and understand your rights. Your spouse, next-of-kin, guardian, or parent will also be informed of your rights. In some instances, one or the other may act in your behalf.

This pamphlet lists many of those rights to which you are entitled, limited only by statute, rule, or court decision. Limitations must be documented in your treatment plan. For more information, your Client Advocate is available for interpretation.

**First and foremost—you have the right to be treated with respect and dignity!**

You have the right to treatment. These rights include, but are not limited to:

1. the right to a humane psychological and physical environment;
2. the right to adequate treatment in the least restrictive environment appropriate to your needs;
3. the right to a current, written, individualized treatment plan;
4. the right to informed participation in establishing your treatment plan;
5. the right to freedom from restraint or isolation unless required by psychiatric or medical needs;
6. the right to freedom from unnecessary or excessive medication;
7. the right to periodic information concerning your condition and progress;
8. the right to be informed of any treatment or therapy, including expected physical and medical consequences;
9. the right to have the opportunity to consult with independent specialists and counsel;
10. the right to be informed that sterilization, any unusually hazardous treat-

ment procedures, and psycho surgery may only be performed with your fully informed consent *and* approval of the probate court;

11. the right to be informed that if you are physically unable to receive the information required for surgery or convulsive therapy, or are unable to understand it, the information may be provided to your guardian who may then give written consent;
12. the right to be informed that aversive stimulus may not be used unless written consent has been given by you or obtained from a guardian; and
13. the right to be free from any compulsory medical or psychiatric treatment if you are being treated by spiritual means through prayer alone in accordance with a recognized religious method of healing.

You have the right to notice immediately upon involuntary detention and the right to hearings. These include the following:

1. the right to have a probable cause hearing conducted within three court days from the day on which you requested such hearing after involuntary detention;
2. the right to have your probable cause hearing continued by the court upon your request, but in no case shall the probable cause hearing be held more than ten days after the day on which you requested the continuance;
3. the right to a full hearing within ten days from the probable cause hearing, if you request such hearing;
4. the right to a mandatory hearing between the thirteenth and forty-fifth day after your original involuntary detention, if you had no probable cause hearing or a full hearing;
5. the right to request a full hearing every 100 days after the expiration of the first ninety-day period while you are

involuntarily committed;

6. the right to a mandatory hearing at least every two years after the expiration of the first ninety-day period and on the initial application for continued commitment;
7. the right to attend all hearings;
8. the right to make immediately a reasonable number of telephone calls or use other reasonable means to contact an attorney, a physician, a licensed clinical psychologist, or to contact some other person or persons to secure representation by counsel, or to obtain medical or psychological assistance, and be provided assistance in making calls if such assistance is needed and requested;
9. the right to hire an attorney or, if indigent, to request a Legal Aid attorney and, if none is available, to have a court appointed attorney or representation by the Ohio Legal Rights Service; and
10. the right to independent expert evaluation and, if indigent, the right to such evaluation at public expense.

You have the right to communicate freely with, and be visited at reasonable times by, the following:

1. your legal counsel;
2. personnel of the Ohio Legal Rights Service; and
3. your personal physician or psychologist, unless prior court restriction has been obtained.

You have the right to communicate freely with others, unless specifically restricted in your treatment plan for clear treatment reasons, including without limitation the following:

1. the right to receive visitors at reasonable times; and
2. the right to have reasonable access to telephones to make and receive confidential calls, including a reasonable

number of free calls if unable to pay for them, and assistance in calling if requested and needed.

You have the right to have ready access to letter writing materials and stamps, including a reasonable number without cost if you are unable to pay for them, and to mail and receive unopened correspondence and receive assistance in writing if requested and needed.

You have the right to personal privileges, consistent with health and safety factors. These rights include, but are not limited to:

1. the right to wear your own clothing and maintain your own personal effects;
2. the right to be provided an adequate allowance for or allotment of neat, clean, and seasonable clothing if unable to provide your own;
3. the right to maintain your personal appearance according to individual taste, including head and body hair.
4. the right to keep and use personal possessions, including toilet articles;
5. the right to have access to individual storage space for your private use;
6. the right to keep and spend a reasonable sum of money for expenses and small purchases;
7. the right to read and possess reading materials without censorship, limited only by the clear and present danger to the safety of others;
8. the right to be protected from abuse and neglect; and
9. the right to receive assistance from your Client Advocate when, in your opinion, your rights have been violated.

Your civil rights are guaranteed by law. You are considered legally competent to retain those rights, benefits, and privileges unless there has been a court decision of incompetence for that purpose in a separate judicial proceeding. These rights include, but are not limited to:

1. the right not to be deprived of public or private employment, solely by reason of your having received services, voluntary or involuntary, for a mental disability; and
2. the right to retain all rights not specifically denied you under the Ohio Revised Code.

Your other rights include, but are not limited to:

1. the right to social interaction with members of either sex, subject to adequate supervision, unless such social interaction is specifically withheld under your treatment plan;
2. the right to reasonable privacy, including periods and places of privacy;
3. the right to confidentiality in accordance with state law;
4. the right to have your personal possessions preserved and safeguarded;
5. the right to use your personal funds for your own personal benefit, to be regularly informed of your financial status, and to be provided assistance in the use of your resources;
6. the right to receive information concerning available income resources and to have access and assistance in the pursuit of income resources;
7. the right to be informed of the reasons for your admission to an institution, discharge procedures, and to be involved in your own post-discharge plans;
8. the right to discharge after successfully completing one year of continuous trial visit;
9. the right to free exercise of religious worship, including the right to services and sacred texts that are within the reasonable capacity of the institution to supply, provided that no person will be coerced into engaging in any religious activities;

10. the right to refuse to perform labor which involves the operation, support, or maintenance of the institution. (Additionally, your privileges or release from the institution shall not be conditional upon such labor. You are, however, expected to perform therapeutic tasks if those tasks are an integrated part of your treatment plan. You are also expected to perform tasks of a personal housekeeping nature.);

11. the right to have your presence brought to the attention of your spouse, guardian, next-of-kin, or other responsible person(s) designated by you, with your consent, after admission to an institution if you are a voluntary client;
12. the right to receive assistance in making and presenting a request for release if you are a voluntary client;
13. the right to apply for voluntary admission at any time; and
14. the right to pursue a writ of habeas corpus.

If you, your spouse, next-of-kin, guardian, parent, or other person think your rights have been violated, report this to (1) the Client Advocate at the institution; and/or (2) the Client Advocacy Coordinator in the Department of Mental Health at the following address:

Ohio Department of Mental Health  
State Office Tower / 11th floor  
30 East Broad Street  
Columbus, Ohio 43215

The above-named reporting areas do not preclude your right to seek legal counsel.

No individual shall be excluded from participation in, denied the benefits of, or be subjected to discrimination from any program or activity on the basis of a physical or mental handicap.

APPENDIX B. OHIO STATUTE ANALYSIS

Index

Analysis Outline . . . . . B- 3  
Ohio Statute Analysis . . . . . B-15



## PREHEARING MATTERS

- Section 1      Initiating a commitment
- a. Considerations
    - i. Means of initiation
    - ii. Persons who may initiate proceedings
    - iii. Supporting allegations, petitions, and attachments
    - iv. Screening mechanisms
    - v. Criteria for initiation
  - b. Variations in statutes and court rules
  - c. Procedural guidelines
  - d. Commentary
- Section 2      Alternatives to and diversions from prehearing detention
- a. Considerations
    - i. Permitted
    - ii. Options specified
    - iii. Provision for payment
  - b. Variations in statutes and court rules
  - c. Procedural guidelines
  - d. Commentary
- Section 3      Authorizing detention
- a. Considerations
    - i. Criteria for detention and required standard of proof
    - ii. Authority to order detention
  - b. Variations in statutes and court rules
  - c. Procedural guidelines
  - d. Commentary
- Section 4      Taking respondent into custody
- a. Considerations
    - i. Procedures for taking and holding respondent in custody
    - ii. Notifying respondent of his or her rights
    - iii. Payment
  - b. Variations in statutes and court rules
  - c. Procedural guidelines
  - d. Commentary
- Section 5      Prehearing detention
- a. Considerations

- i. Place of detention
- ii. Maximum period of prehearing detention
- iii. Authority to transfer custody
- iv. Provision for payment
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary

Section 6 Notice of detention

- a. Considerations
  - i. To whom is notice given
  - ii. By whom
  - iii. Timing
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary

Section 7 Provision of counsel

- a. Considerations
  - i. Right to counsel
  - ii. Provision of counsel for indigents - method of determining indigency
  - iii. Method and timing of appointment of counsel
  - iv. Counsel's responsibilities and rights to access
  - v. Provision for payment
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary

Section 8 Prehearing examination

- a. Considerations
  - i. Timing
  - ii. Examiner number and qualifications
  - iii. Right to remain silent
  - iv. Right to independent examination and social investigation
  - v. Notification of rights
  - vi. Required elements of examination
  - vii. Provision for payment of examiners
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary

Section 9 Prehearing treatment

- a. Considerations
  - i. Circumstances
  - ii. Notice of right to refuse
  - iii. Provision for payment

- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary

Section 10 Prehearing dismissal or discharge

- a. Considerations
  - i. Circumstances
  - ii. Authority
  - iii. Notification requirements
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary





## THE HEARING: ADJUDICATING THE QUESTION OF COMMITMENT

### Section 1 Hearing characteristics

- a. Considerations
  - i. Provisions for holding hearings
  - ii. Requesting a hearing (if not mandatory)
  - iii. Notification requirements
  - iv. Timing of hearing
  - v. Place of hearing
  - vi. Hearing body
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary

### Section 2 Counsel

- a. Considerations
  - i. Counsel for respondent
  - ii. Provision for state or county counsel
  - iii. Private counsel for petitioner or applicant
  - iv. Role and responsibility of counsel
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary

### Section 3 Opportunity for voluntary admission

- a. Considerations
  - i. Right to request voluntary admission
  - ii. Notice of right
  - iii. Relevance of respondent's competency
  - iv. Approval procedures and conditions
  - v. Extraordinary consequences of voluntary admission
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary

### Section 4 Criteria for involuntary commitment

- a. Considerations
  - i. What must be shown
  - ii. Specific conjunctive criteria
  - iii. Consideration of less restrictive alternatives
  - iv. Required standard of proof
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary

Section 5 Jury trial

- a. Considerations
  - i. Right to trial by jury
  - ii. Judicial authority to dismiss jury verdict
  - iii. Jury procedure requirements
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary

Section 6 Procedural Issues

- a. Considerations
  - i. Presence of respondent at hearing
  - ii. Presence of examiners at hearing
  - iii. Presence of other witnesses
  - iv. Public access to hearings
  - v. Record of hearing
  - vi. Continuances
  - vii. Evidentiary matters
  - viii. Provision for payment
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary





THE HEARING: DETERMINING TREATMENT

Section 1 Adjudicating the question of respondent's capacity to refuse treatment

- a. Considerations
  - i. Mandatory part of hearing
  - ii. Implicit to, but not independent question of hearing
  - iii. Independent proceeding
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary

Section 2 Treatment plan

- a. Considerations
  - i. Required
  - ii. Timing of treatment plan
  - iii. Respondent's right to challenge
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary

Section 3 Commitment or order for care or treatment

- a. Considerations
  - i. Hospital alternatives specified
  - ii. Less restrictive alternatives specified
  - iii. Responsibility to consider treatment options
  - iv. Judicial authority to mandate admission or specify treatment
  - v. Provision for payment
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary



## POSTHEARING

- Section 1 Notification requirements
  - a. Considerations
    - i. Notification of commitment
    - ii. Notification of dismissal
    - iii. Notification of discharge
  - b. Variations in statutes and court rules
  - c. Procedural guidelines
  - d. Commentary
  
- Section 2 Appeal
  - a. Considerations
    - i. Who may appeal
    - ii. Judicial body receiving appeal
    - iii. Procedures to initiate appeal
    - iv. Appeal on record or de novo
    - v. Right to jury
    - vi. Timing of appeal
    - vii. Provisions for release pending appeal
  - b. Variations in statutes and court rules
  - c. Procedural guidelines
  - d. Commentary
  
- Section 3 Institutional authority and the role of the court
  - a. Considerations
    - i. Admittance
    - ii. Treatment
    - iii. Periodic progress reports to court
    - iv. Transfer
    - v. Discharge
  - b. Variations in statutes and court rules
  - c. Procedural guidelines
  - d. Commentary
  
- Section 4 Patient's rights
  - a. Considerations
    - i. Right to treatment
    - ii. Right to refuse treatment
    - iii. Right to seek release
    - iv. Patient's rights and civil rights
    - v. Specific provisions
    - vi. Patient advocacy systems
  - b. Variations in statutes and court rules
  - c. Procedural guidelines
  - d. Commentary



Section 5 Retention or recertification

- a. Considerations
  - i. Periods of commitment
  - ii. Process for extending commitment
  - iii. Special procedures for retention or recertification hearings
- b. Variations in statutes and court rules
- c. Procedural guidelines
- d. Commentary

## OHIO STATUTE ANALYSIS

### Prehearing Matters

#### Section 1 Initiating a commitment

##### 1.1 Means of initiation

Emergency procedure. 5122.10.

Judicial procedure. 2945.38, 2945.40, 5122.11-5122.15.

##### 1.2 Who may initiate

###### Emergency

Any psychiatrist, licensed clinical psychologist, licensed physician, health officer, parole officer, police officer, or sheriff may take a person into custody, or the chief of the adult parole authority or a parole or probation officer with the approval of the chief of the authority may take parolee, probationer, or furlougher into custody and may immediately transport him to a hospital. 5122.10.

###### Judicial

Any person may file affidavit (affidavit based on either reliable information or actual knowledge, whichever is determined to be proper by the court). 5122.11.

##### 1.3 Supporting allegations, petitions, and attachments

###### Emergency

Initiating person has reason to believe that the person is a mentally ill person subject to hospitalization and represents a substantial risk of physical harm to himself or others if allowed to remain at liberty pending examination. 5122.10.

A written statement shall be given to the hospital by the transporting agent stating the circumstances under which such person was taken into custody and the reasons for the agent's belief. Statement shall be made available to the respondent or his or her attorney on request. 5122.10.

###### Judicial

The affidavit shall contain an allegation setting forth the specific category or categories of the Revised Code upon which the jurisdiction of the court is based and a statement of alleged facts sufficient to indicate probable cause to believe that the person is a mentally ill person subject to hospitalization by court order. The affidavit may be

accompanied, or the court may require that such affidavit be accompanied, by a certificate of a psychiatrist, or a certificate signed by a licensed clinical psychologist and a certificate signed by a licensed physician stating that he or she has examined the person and is of the opinion that the person is a mentally ill person subject to hospitalization by court order, or shall be accompanied by a written statement by the affiant, under oath, that the person has refused to submit to an examination by a psychiatrist, or by a licensed clinical psychologist and licensed physician. 5122.11.

#### 1.4 Screening mechanisms

##### Emergency

Respondent examined within 24 hours by the hospital staff; admitted on unclassified status if necessary. 5122.10.

##### Judicial

Upon receipt of the affidavit the court may order an investigation by a social worker or other investigator. Written report covers availability of appropriate treatment alternatives. 5122.13. Order of temporary detention only if judge (or referee) has probable cause. 5122.11.

#### 1.5 Criteria for initiation

##### Emergency

Reason to believe respondent is a "mentally ill person subject to hospitalization by court order" and represents a substantial risk of physical harm to himself or others if allowed to remain at liberty pending examination. 5122.10.

##### Judicial

Probable cause to believe respondent is a "mentally ill person subject to hospitalization by court order". 5122.11.

### Section 2 Alternatives to and diversions from prehearing detention

#### 2.1 Permitted

##### Emergency

Head of hospital may admit as a voluntary patient. 5122.10.

## Judicial

Respondent under custody order may be detained for not more than forty-eight hours in his or her home, a licensed rest or nursing home, a licensed or unlicensed hospital, a mental health clinical facility, or a county home but he or she shall not be detained in a nonmedical facility used for detention of persons charged with or convicted of penal offenses unless the court finds that a less restrictive alternative cannot be made available. 5122.17.

### 2.2 Options specified

#### All

See 2.1, above.

### 2.3 Provision for payment

#### All

See Section 4.3 below. The rate to be charged for pre-admission care, after-care, day-care or routine consultation and treatment services shall be based upon the ability of the patient or his other liable relatives to pay. When it is determined by the Department that a charge shall be made, such charge shall be computed according to income or other assets, and the needs of others who are dependent on such income and other assets for support. 5121.04(B)(9), 5121.04(B)(2).

## Section 3 Authorizing detention

### 3.1 Criteria for detention and required standard of proof

#### Emergency and Judicial

Same as Section 1.5, above, Criteria for Initiation.

### 3.2 Authority to order detention

#### Emergency

Same as Section 1.2, above, Who May Initiate.

#### Judicial

Judge of probate court or referee who is an attorney at law appointed by the court. 5122.11.

Section 4 Taking respondent into custody

4.1 Procedures for taking respondent into custody

Emergency

Any psychiatrist, licensed clinical psychologist, licensed physician, health officer, parole officer, police officer, or sheriff may take a person into custody, or the chief of the adult parole authority or a parole or probation officer with the approval of the chief of the authority may take a parolee, probationer, or furlougher into custody and may immediately transport him to a hospital. 5122.10.

Every reasonable and appropriate effort shall be made to take persons into custody in the least conspicuous manner possible. 5122.10.

Judicial

Temporary order of detention directs any health or police officer or sheriff to take respondent into custody and transport such person to a hospital (or other place - see 2.1, above). 5122.11.

4.2 Notifying respondent of his or her rights

All

Any person who is involuntarily detained in a hospital or is otherwise in custody under this chapter shall, immediately upon being taken into custody, be informed and provided with a written statement that he may:

(1) Make immediately a reasonable number of telephone calls or use other reasonable means to contact an attorney, a physician, a licensed clinical psychologist, or to contact some other person or persons to secure representation by counsel, or to obtain medical or psychological assistance, and be provided assistance in making calls if such assistance is needed and requested;

(2) Retain counsel and have independent expert evaluation of his mental condition and, if he is unable to obtain an attorney or independent expert evaluation, be represented by court-appointed counsel or have independent expert evaluation of his mental condition, or both, at public expense if he is indigent;

(3) Have a hearing, upon request, to determine whether or not there is probable cause to believe he is a mentally ill person subject to hospitalization by court order.  
5122.05.

Respondent has right to be notified of rights under the law (listed in Posthearing, Section 4.1) within 24 hours of admission. 5122.27.

Right to a written list of all rights enumerated in this chapter, read and explained if respondent unable to read. 5122.29(A).

#### 4.3 Payment

##### Emergency and Judicial

Costs and expenses of all proceedings held under this chapter shall be paid as follows:

(1) To police and health officers, other than sheriffs or their deputies, the same fee allowed to constables to be paid upon the approval of the probate judge.

(2) To a person other than the sheriff or his deputies for taking a mentally ill person to a hospital or removing one therefrom, the actual necessary expense incurred, specifically itemized and verified by his oath and approved by the probate judge;

(3) To assistants who convey mentally ill persons to the hospital when authorized by the probate judge, a fee set by the probate court, provided such assistants are not drawing a salary from the state or any political subdivision thereof, and their actual necessary expense incurred, provided that such expenses are specifically itemized and verified by their oath and approved by the probate judge.

Such fees and expenses, together with all costs in the probate division shall be certified to the state and paid by the state out of the state treasury.  
5122.43.

#### Section 5 Prehearing detention

##### 5.1 Place of detention

##### Emergency

Generally, respondent is transported to a licensed mental health hospital or mental health clinical facility. 5122.10, 5122.01(F),(H), 5119.20. Respondent may be transported to a general hospital not licensed by the Department of Mental Health where he may be held for twenty-four hours after which he must be transferred to a hospital licensed by the Department of Mental Health. 5122.10.

##### Judicial

A hospital (5122.11); pending his removal to a hospital, a person taken into custody or ordered to be hospitalized pursuant to the Revised Code may be detained for not more than forty-eight hours in his home, a

licensed rest or nursing home, a licensed or unlicensed hospital, a mental health clinical facility, or a county home but he shall not be detained in a nonmedical facility used for detention of persons charged with or convicted of penal offenses unless the court finds that a less restrictive alternative cannot be made available. 5122.17.

## 5.2 Maximum period of pre-hearing detention

### Emergency

If after 3 days, respondent is not admitted as a voluntary patient, an affidavit has not been filed by the head of the hospital, and the court has not otherwise issued a temporary order of detention, the head of the hospital shall discharge the person unless the person has been sentenced to the department of rehabilitation and correction and has not been released from his sentence, in which case the person shall be returned to that department. 5122.10.

### Judicial

Respondent (or other) may request a probable cause hearing, to be held within 3 days of the request. 5122.141(B). Respondent or his counsel may request a full hearing, to be held as soon as possible within 10 days from the probable cause hearing. 5122.141(H). Unless the respondent has been discharged, a mandatory full hearing shall be held between the 30th and 45th day after the original involuntary detention of any respondent who has had no probable cause hearing, or who failed to request a full hearing, or whose full hearing was not held because continuance was ordered. 5122.141(H).

## 5.3 Authority to transfer custody

### Emergency

If a person taken into custody under this section is transported to a general hospital, the general hospital may admit the person, or provide care and treatment for the person, or both, but by the end of twenty-four hours after his arrival at the general hospital, the person shall be transferred to a mental health hospital. 5122.10.

Also, see Section 5.2, above.

### Judicial

Not Specifically Mentioned (Hereinafter, NSM)

## 5.4 Provisions for payment

### All

NSM (But see The Hearing Determining Treatment, Section 3.5).

Section 6 Notice of detention

1.1 To whom is notice given

All

Whenever a person has been involuntarily detained at or admitted to a hospital or other facility at the request of anyone other than the person's legal guardian, spouse, or next of kin, the head of the hospital or other facility in which the person is temporarily detained shall immediately notify the person's legal guardian, spouse or next of kin, and counsel, if these persons can be ascertained through exercise of reasonable diligence. If a person voluntarily remains at or is admitted to a hospital or other facility, such notification shall not be given without his consent. The head of the hospital or other facility shall inform a person voluntarily remaining at or admitted to a hospital or other facility that he may authorize such notification. 5122.18.

6.2 By whom

All

Head of hospital or other facility. 5122.18.

6.3 Timing

All

(See Section 6.1, above.)

Section 7 Provision of counsel

7.1 Right to counsel

All

The respondent has the right to be represented by counsel of his choice. 5122.15. See Section 4.2, above.

7.2 Provision of counsel for indigents--method of determining indigency

All

If the respondent is indigent, court-appointed counsel shall be provided. 5122.15(A)(4).



"Indigent" means unable without deprivation of satisfaction of basic needs to provide for the payment of an attorney and other necessary expenses of legal representation, including expert testimony. 5122.01.

### 7.3 Method and timing of appointment of counsel

#### All

If the respondent is not represented by counsel, is absent from the hearing, and has not validly waived the right to counsel, the court shall appoint counsel immediately to represent him at the hearing, reserving the right to tax costs of appointed counsel to the respondent, unless it is shown that he is indigent. If the court appoints counsel, or if the court determines that the evidence relevant to the respondent's absence does not justify the absence, the court shall continue the case. 5122.15(A)(3).

### 7.4 Counsel's responsibilities and rights of access

#### All

With the consent of the respondent, the following shall be made available to counsel for the respondent:

(a) All relevant documents, information, and evidence in the custody or control of the state or prosecutor;

(b) All relevant documents, information and evidence in the custody or control of the hospital in which the respondent is currently held, or in which he has been held pursuant to this chapter;

(c) All relevant documents, information, and evidence in the custody or control of any hospital, facility, or person not included in division (a) or (b) of this section.

5122.15(A)(1).

### 7.5 Provision for payment

#### All

Costs and expenses of all proceedings held under this chapter shall be paid as follows:

To an attorney appointed by the probate division for an indigent alleged mentally ill person pursuant to any section of this chapter, such fees as are determined by the probate division. When such indigent persons are before the court all filing and recording fees shall be waived.

Such fees and expenses, together with all costs in the probate division shall be certified to the state and paid by the state out of the state treasury. 5122.43.

Section 8 Prehearing examination

8.1 Timing

All

Upon receipt of the affidavit the court may order an investigation by a social worker or other investigator. 5122.13.

Emergency

A person transported or transferred to a hospital or mental health clinical facility under this section shall be examined by the staff of the hospital or facility within twenty-four hours after his arrival at the hospital or facility. 5122.10.

Judicial

Immediately after acceptance of an affidavit, the court may appoint where a certification has been filed, or shall appoint where no such certification has been filed, at least one psychiatrist, or a licensed clinical psychologist and a licensed physician to examine the respondent. 5122.14.

8.2 Examiner number and qualifications

Investigation:

All

A social worker or other investigator appointed by the court. 5122.13.

Medical Exam:

Emergency

Staff of the hospital or facility. 5122.10.

Judicial

If a certification is filed court may, or if no certification the court shall appoint at least one psychiatrist, or a licensed clinical psychologist and a licensed physician. 5122.14. (See Section 1.3, above, Re: Certification)

8.3 Right to remain silent

All

NSM

#### 8.4 Right to independent examination and social investigation

All

The respondent shall be informed that he may have independent expert evaluation. 5122.15(A)(4).

Any person who is involuntarily detained in a hospital or is otherwise in custody under this chapter shall, immediately upon being taken into custody, be informed and provided with a written statement that he may retain counsel and have independent expert evaluation of his mental condition and, if he is unable to obtain an attorney or independent expert evaluation, be represented by court-appointed counsel or have independent expert evaluation of his mental condition, or both, at public expense if he is indigent. 5122.05.

"Independent expert evaluation" means an evaluation conducted by a licensed clinical psychologist, psychiatrist, or licensed physician who has been selected by the respondent or his counsel and who consents to conducting the evaluation. 5122.01(P).

#### 8.5 Notification of rights

All

See Section 8.4, above.

#### 8.6 Required elements of examination

All

Medical examination:

The mental condition of the respondent, and his need for custody, care, or treatment in a mental hospital. 5122.14.

The examination, if possible, shall be held at a hospital or other medical facility, at the home of the respondent, or at any other suitable place least likely to have a harmful effect on the respondent's health. 5122.14.

Investigation:

Such investigation shall cover the allegations of the affidavit and other information relating to whether or not the person named in the affidavit or statement is a mentally ill person subject to hospitalization by court order, and the availability of appropriate treatment alternatives. 5122.13.

8.7 Provision for payment to examiners

All

Costs and expenses of all proceedings held under this chapter shall be paid as follows:

To physicians acting as expert witnesses and to the expert witnesses designated by the court, an amount determined by the court.

Such fees and expenses, together with all costs in the probate division shall be certified to the state and paid by the state out of the state treasury.

5122.43.

Section 9 Prehearing treatment

9.1 Circumstances

All

The person may be observed and treated until the probable cause hearing. If no probable cause hearing is held, the person may be observed and treated until the full hearing. 5122.11.

9.2 Right to refuse; Notice of right

All

NSM

9.3 Provision for payment

All

Rate of support determined by adjusted gross annual income and number of dependents. 5121.04. The department shall annually determine the ability to pay of a patient or his liable relatives and the amount that such person or persons shall pay. 5121.03.

Section 10 Prehearing dismissal/discharge

10.1 Circumstances

Emergency

After the examination, if the head of the hospital believes that the person is not a mentally ill person subject to hospitalization by court order, he shall release or discharge the person immediately unless a court has issued a temporary order of detention applicable to the person. After the examination, if the head of the hospital believes that the person is a mentally ill person subject to hospitalization by court order, he may detain the person for not more than three court days following the day of the examination and during such period admit the person as a voluntary patient or file an affidavit. If neither action is taken and a court has not otherwise issued a temporary order of detention applicable to the person, the head of the hospital shall discharge the person at the end of the three-day period unless the person has been sentenced to the department of rehabilitation and correction and has not been released from his sentence, in which case the person shall be returned to that department. 5122.10.

Judicial

Every person shall be examined by the staff of the hospital or facility as soon as practicable after arrival. Such exam shall be held within 24 hours after the time of arrival, and if the head of the hospital fails after such exam to certify that in his opinion the person is a mentally ill person subject to hospitalization by court order, the person shall be immediately released. 5122.19.

10.2 Authority

Emergency

Head of hospital. 5122.10.

Judicial

Head of hospital. 5122.19.

10.3 Notification requirements

Emergency

NSM

Judicial

NSM

The Hearing: Adjudicating the Question of Commitment

Section 1 Hearing characteristics

1.1 Provisions for holding hearings

Emergency

No hearing available during 3 day emergency hospitalization. 5122.10.

(NOTE: A respondent who is involuntarily placed in a hospital or other place shall on request of the respondent, his guardian, the head of the hospital, or on the court's own motion be afforded a hearing to determine whether or not there is probable cause to believe that the respondent is a mentally ill person subject to hospitalization by court order. Held within 3 days of request (unless continued). 5122.141.)

Judicial

Unless the person has been discharged, a mandatory full hearing shall be held between the thirtieth and forty-fifth day after the original involuntary detention of any respondent who has had no probable cause hearing, or who failed to request a full hearing, or whose full hearing was not held because continuance was ordered. 5122.141.

All

Eventual hearing is mandatory, but respondent or counsel may request a hearing any time between the probable cause and mandatory hearing. 5122.141.

1.3 Notification requirements

All

After receipt of the affidavit the court shall cause written notice by mail or otherwise of any hearing as the court directs, to be given to the following persons:

- (A) The respondent;
- (B) The respondent's legal guardian, if any, the respondent's spouse, if any, and the respondent's parents, if the respondent is a minor, if these persons' addresses are known to the court or can be obtained through exercise of reasonable diligence;
- (C) The person filing such affidavit;
- (D) Any one person designated by the respondent; but if such respondent does not make a selection, the notice shall be sent to the adult next of kin other than the person who filed the affidavit if the person's address is known to the court or can be obtained through exercise of reasonable diligence;

- (E) The respondent's counsel;
- (F) The director or head of the hospital or the respective designee.

Any person entitled to notice under this section with the exception of the respondent, may waive the notice.

A copy of the affidavit and temporary order of detention shall be served with the notice to the parties and to respondent's counsel, if counsel had been appointed or retained.  
5122.12.

#### 1.4 Timing of hearing

All

Unless the person has been discharged, a mandatory full hearing shall be held between the thirtieth and fourth-fifth day after the original involuntary detention of any respondent who has had no probable cause hearing, or who failed to request a full hearing, or whose full hearing was not held because continuance was ordered. 5122.141.

#### 1.5 Place of hearing

All

May be conducted in or out of the county in which the respondent is held. 5122.15.

#### 1.6 Hearing body

All

The hearings shall be conducted by a judge of the probate court or a referee designated by a judge of the probate court. Any referee designated under this division shall be an attorney. 5122.15.

A referee appointed by the court may make all orders that a judge may make, except an order of contempt of court. 5122.15(J).

### Section 2 Counsel

#### 2.1 Counsel for respondent

All

See Prehearing Matters, Section 7.

## 2.2 Provision for state or county counsel

A11

An attorney designated by the Attorney General shall present the case demonstrating that the respondent is a mentally ill person subject to hospitalization by court order. The Attorney General shall offer evidence of the diagnosis, prognosis, record of treatment, if any, and less restrictive treatment plans, if any. 5122.15.

## 2.3 Private counsel for petitioner or applicant

A11

NSM

## 2.4 Role and responsibility of counsel

A11

See Prehearing Matters, Section 7.4, and Section 2.2, above.

## Section 3 Opportunity for voluntary admission

### 3.1 Right to request voluntary admission

A11

Any person who has been committed under this section, or for whom proceedings for hospitalization have been commenced may, at any time, apply for voluntary admission to the hospital, facility, or person to which he was committed. 5122.15(G).

### 3.2 Notice of right

A11

NSM

### 3.3 Relevance of respondent's competency

A11

NSM



### 3.4 Approval procedures and conditions

#### All

Respondent makes written application; may be admitted unless the head of the hospital finds that hospitalization is inappropriate. 5122.02.

### 3.5 Extraordinary consequences of voluntary admission

#### All

NSM (For all voluntary patients, whether, or not initially admitted involuntarily, the head of the hospital may file an affidavit for involuntary hospitalization and release may be postponed until the hearing. 5122.03.)

## Section 4 Criteria for involuntary commitment

### 4.1 What must be shown

#### All

That the respondent is a "mentally ill person subject to hospitalization by court order". 5122.15.

### 4.2 Consideration of less restrictive alternatives

#### All

If court orders investigation by social worker or other investigator, report shall cover the availability of alternative treatment methods. 5122.13.

In determining the place to which, or the person with whom, the respondent is to be committed, the court shall consider the diagnosis, prognosis, and projected treatment plan for the respondent and order the implementation of the least restrictive alternative available and consistent with treatment goals. 5122.15(E).

In proceedings under this chapter, the Attorney General shall offer evidence of less restrictive treatment plans, if any. 5122.15(B)(10).

### 4.3 Required standard of proof

#### All

Clear and convincing. 5122.15(B).

Section 5 Jury trial

5.1 Is the right to trial by jury provided?

All

NSM

5.2 Judicial authority to dismiss jury verdict?

All

Not Applicable (Hereinafter, N/A)

5.3 Jury procedure requirements

All

N/A

Section 6 Procedural issues

6.1 Presence of respondent at hearing?

All

The respondent has the right to attend the hearing. 5122.15(A)(2).

The respondent has the right, but shall not be compelled, to testify, and shall be so advised by the court. 5122.15(A)(12).

6.2 Presence of examiners at hearing?

All

Respondent or his or her counsel has the right to subpoena, examine and cross-examine witnesses. 5122.15(11). The court shall receive only reliable, competent and material evidence. 5122.15(A)(9). (NOTE: Examiners may be excused from testifying at the probable cause hearing if respondent's counsel (or R if not represented by counsel), state's attorney, and the court agree to excuse. 5122.141(D)(2).)

If the respondent is in a hospital prior to a probable cause hearing, the court may accept as evidence the written report of a psychiatrist, or of a licensed clinical psychologist and a licensed physician, designated by the head of such hospital as the pre-hearing report and findings. 5122.14.

### 6.3 Presence of other witnesses

#### All

The respondent or his counsel has the right to subpoena witnesses and documents and to examine and cross-examine witnesses. 5122.15(A)(11).

### 6.4 Public access to hearings

#### All

The hearing shall be closed to the public, unless counsel for the respondent, with the permission of the respondent, requests that the hearing be open to the public.

If the hearing is closed to the public, the court may, for good cause shown, admit persons having a legitimate interest in the proceedings. If the respondent, his counsel, the designee of the director or of the head of the hospital objects to the admission of any person, the court shall hear the objection and any opposing argument and shall rule upon the admission of the person to the hearing. 5122.15(A)(5, 6).

### 6.5 Record of hearing

#### All

Upon request of the respondent's counsel, or if the respondent is not represented by counsel, the court shall make and maintain a full transcript and record of the proceeding. If the respondent is indigent and the transcript and record is made, a copy shall be provided to the respondent upon request and certified to and paid by the state. 5122.15(A)(14), 5122.43.

### 6.6 Continuances

#### All

If the court appoints counsel, or if the court determines that the evidence relevant to the respondent's absence does not justify the absence, the court shall continue the case. 5122.15 (A), (8).

On motion of the respondent or his counsel for good cause shown, or on the court's own motion the court may order a continuance of the hearing. 5122.15(A)(13).

#### 6.7 Evidentiary rules

##### All

The court shall receive only reliable, competent and material evidence. 5122.15(A)(9).

To the extent not inconsistent with this chapter, the Rules of Civil Procedure are applicable. 5122.15(A)(15).

The investigation report is not admissible as evidence for the purpose of establishing whether or not the respondent is a mentally ill person subject to hospitalization by court order, but shall be considered by the court in its determination of an appropriate placement (if committed). 5122.13.



## The Hearing: Determining Treatment

### Section 1 Adjudicating the question of competency to refuse treatment

#### 1.1 Mandatory part of hearing

A11

NSM

#### 1.2 Implicit to, but not independent question of, hearing

A11

NSM

#### 1.3 Independent proceeding?

A11

Adjudication of incompetence accomplished pursuant to a judicial proceeding other than a proceeding under sections 5122.11 to 5122.15 (civil commitment sections). 5122.301.

### Section 2 Treatment plan

#### 2.1 Required

A11

In determining the place to which, or the person with whom, the respondent is to be committed, the court shall consider the diagnosis, prognosis, and projected treatment plan for the respondent. 5122.15(E).

#### 2.2 Timing of treatment plan

A11

In proceedings under this chapter, the Attorney General shall offer evidence of the diagnosis, prognosis, record of treatment, if any, and less restrictive treatment plans, if any. 5122.15(A)(10).

The person who conducts the investigation shall promptly make a report to the court, in writing, in open court or in chambers, as directed by the court, and a full record of the report shall be made by the court. 5122.13.

### 2.3 Respondent's right to challenge

#### All

The respondent or his counsel has the right to subpoena witnesses and documents and to examine and cross-examine witnesses. 5122.15(A)(11).

## Section 3 Commitment or order for care or treatment

### 3.1 Hospitalization alternatives specified

#### All

If, upon completion of the hearing the court finds clear and convincing evidence that the respondent is a mentally ill person subject to hospitalization by court order, the court shall order the respondent, for a period not to exceed ninety days to:

- (1) A hospital operated by the department of mental health;
  - (2) A nonpublic hospital;
  - (3) The veterans' administration or other agency of the United States government;
  - (4) A community mental health clinical facility;
  - (5) Receive private psychiatric or psychological care and treatment;
  - (6) Any other suitable facility or person consistent with the diagnosis, prognosis, and treatment needs of the respondent; or
  - (7) An inpatient unit administered by a community mental health center licensed by the division of mental health of the department of mental health and mental retardation.
- 5122.15(C).

### 3.2 Less restrictive alternatives specified

#### All

See Section 3.1, above.

### 3.3 Responsibility to consider treatment options

#### All

Court-appointed medical examiner shall report to the court his or her findings as to the respondent's need for custody, care, or treatment in a mental hospital. 5122.14. Social worker or other investigator appointed by the court. 5122.13. The court. 5122.15(E).

### 3.4 Judicial authority to mandate admission or specify treatment

#### All

Commitment to a nonpublic hospital, veterans' administration or other agency of the United States government, private psychiatric or psychological treatment resources, or any other suitable facility or person shall be conditioned upon the receipt by the court of consent by such hospital, facility, or person to accept the respondent. 5122.15(D).

Commitment to a community mental health facility or an inpatient unit administered by a licensed community mental health center shall be conditioned on the receipt by the court of evidence of available space in the community mental health clinical facility or inpatient unit administered by a community mental health center. 5122.15(D).

### 3.5 Provision for payment

#### All

All patients of a benevolent institution shall be maintained at the expense of the state. Their traveling and incidental expenses in conveying them to the institution shall be paid by the county of commitment. Upon admission, the patients shall be neatly and comfortably clothed. Thereafter, the expense of necessary clothing shall be borne by the responsible relatives or guardian if they are financially able. If not furnished, the state shall bear the expense. Any required traveling expense after admission to the institution shall be borne by the state if the responsible relatives or guardian are unable to do so. 5121.01.

When any person is committed to an institution under the jurisdiction of the Department of Mental Health pursuant to judicial proceedings, the judge ordering such commitment shall:

(A) Make a reliable report on the financial condition of such person and of each of the relatives of the person who are liable for his support, as provided in the Revised Code and rules and procedures agreed upon by the director of mental health.

(B) Certify to the managing officer of such institution, and the managing officer shall thereupon enter upon his records the name and address of any guardian appointed and of any relative liable for such person's support.

5121.02.

The Department of Mental Health shall investigate the financial condition of the patients in hospitals and institutions, and those whose care or treatment is being paid for in a private facility or home under the department's control and of the relatives liable for the support of such patients, in order to determine the ability [sic] of any patient or such relatives for the support of the patient and to provide suitable clothing as required by the superintendent of the institution. In all cases, in determining ability to pay and the amount to be charged, due regard shall be had for others who may be dependent for support upon such relatives or the estate of the patient. 5121.04(A).



The department of mental health may subpoena witnesses, take testimony under oath, and examine any public records relating to the income and other assets of a patient or of a relative liable for such patient's support. All information, conclusions, and recommendations shall be submitted to the department by the investigating agent of the department. The department shall determine the amount of support to be paid, by whom, and whether clothing shall be furnished by the relatives or guardian. 5121.05.

The patient, his estate, and the patient's husband or wife are jointly and severally liable for the support of a patient in an institution. 5121.06.

## Part V: Posthearing

### Section 1 Notification requirements

#### 1.1 Notification of commitment

##### All

The head of the hospital admitting a respondent pursuant to a judicial proceeding shall, within ten working days, make a report of such admission to the Department of Mental Health. 5122.15(I).

#### 1.2 Notification of dismissal

##### All

NSM

#### 1.3 Notification of discharge

##### Judicial

Head of a hospital shall immediately make a report of the discharge to the division of mental health facilities and services. 5122.21(A). Head of the hospital shall notify the court that caused the judicial hospitalization. 5122.21(B).

### Section 2 Appeal

#### 2.1 Who may appeal

##### All

- a) Referee's order - a party. 5122.15(J).
- b) Court's order - an order of the court for an initial ninety-day hospitalization, continued commitments, and rulings on a referee's order are final orders. 5122.15(K).

NOTE: Although no right of appeal is specifically provided in the mental health statutes, there is an appeal route from the court of common pleas to the courts of appeals.

## 2.2 Judicial body receiving appeal

All

- a) Referee's order - judge of the probate court. 5122.15(J).
- b) Court's order - NSM (see NOTE, Section 2.1, above).

## 2.3 Procedures to initiate appeal

All

- a) Referee's order - within fourteen days of the making of an order by a referee, a party may file written objections to the order with the court. Such objections shall be considered a motion, shall be specific, and shall state its grounds with particularity. 5122.15(J).
- b) Court's order - NSM.

## 2.4 On record or de novo

All

- a) Referee's order - within ten days of the filing of such objections, a judge of the court shall hold a hearing on the objections and may hear and consider any testimony or other evidence relating to the respondent's mental condition. 5122.15(J).
- b) Court's order - NSM.

## 2.5 Right to jury

All

NSM

## 2.6 Timing of appeal

- a) Referee's order - objection within 14 days of referee's order, hearing in 10 days from filing of objection. 5122.15(J). At the conclusion of the hearing, the judge may ratify, rescind, or modify the referee's order. 5122.15(J).
- b) Court's order - NSM.

## 2.7 Provisions for release pending appeal

All

NSM

Section 3 Institutional authority and the role of the court

3.1 Admittance

All

See The Hearing: Determining Treatment, Section 3.4.

3.2 Treatment

All

During the initial, ninety-day commitment period the hospital, facility, or person shall examine and treat such individual. 5122.15(F).

No patient shall be subjected to sterilization, any unusually hazardous treatment procedures, or psycho-surgery until both his informed, knowing, and intelligent consent and the approval of the court have been obtained. 5122.271(B).

If a patient is physically or mentally unable to receive the information required for surgery and has no guardian, then the information, the recommendation of the chief medical officer, and the concurring judgment of a licensed physician who is not a full-time employee of the state may be provided to the court in the county in which the hospital is located, which may approve the surgery. Before approving the surgery, the court shall notify the legal rights service and shall notify the patient of his rights to consult with counsel, to have counsel appointed by the court if he is indigent, and to contest the recommendation of the chief medical officer. 5122.271(C).

Major aversive interventions shall not be used unless a patient continues to engage in behavior destructive to himself or others after other forms of therapy have been attempted. Major aversive interventions may be applied if approved by the behavior modification committee appointed by the director of mental health. The director of the legal rights service shall be notified of any proposed major aversive intervention prior to review by the behavior modification committee.

Unless there is substantial risk of physical harm to himself or others, or a medical emergency, this chapter does not authorize any form of compulsory medical, psychological, or psychiatric treatment of any patient who is being treated by spiritual means through prayer alone in accordance with a recognized religious method of healing without specific court authorization. 5122.271(E).

### 3.3 Periodic progress reports to court

#### All

The head of a public hospital shall immediately report to the department of mental health the removal, death, escape, discharge, or trial visit of any patient judicially hospitalized, or the return of such an escaped or visiting patient to the department, the probate judge of the county from which such patient was hospitalized, and the probate judge of the county of residence of such patient. In case of death, the head of the hospital shall also notify one or more of the nearest relatives of the deceased patient, if known to him, by letter, telegram, or telephone. If the place of residence of such relative is unknown to the head of the hospital, immediately upon receiving notification the probate judge shall in the speediest manner possible notify such relatives, if known to him.

The head of a public hospital shall, upon the request of the probate judge of the county from which a patient was hospitalized or the probate judge of the county of residence of such a patient, make a report to the judge of the condition of any patient under the care, treatment, custody, or control of the head of the hospital.  
5122.23.

### 3.4 Transfer

The chief of the division of mental health facilities and services or his designee may transfer, or authorize the transfer of, an involuntary patient from one public hospital to another, or to a hospital, mental health clinical facility, or other facility offering treatment or other services for mental illness, if the chief of the division determines that it would be consistent with the medical needs of the patient to do so. If such transfer is made to a private facility it shall be conditioned upon the consent of such facility.

Before an involuntary patient may be transferred to a more restrictive setting, the head of the hospital shall file a motion with the court requesting the court to amend its order of placement. At the patient's request, the court shall hold a hearing on the motion at which the patient has the same rights as at a full hearing.  
5122.20.

### 3.5 Discharge

The head of a hospital shall as frequently as practicable examine or cause to be examined every patient and, whenever he determines that the conditions justifying involuntary hospitalization no longer obtain, shall discharge the patient not under indictment or conviction for crime and immediately make a report of the discharge to the division of mental health facilities and services.

After a finding that a person is a mentally ill person subject to hospitalization by court order, the head of the hospital to which the person is ordered or to which the person is transferred may grant a discharge without the consent or authorization of any court.

Upon discharge the head of the hospital shall notify the court that caused the judicial hospitalization of the discharge from the hospital. 5122.21.

If an involuntarily committed patient has successfully completed one year of continuous trial visit, the head of the hospital shall discharge the patient. 5122.22.

If, at the end of the first ninety-day period or any subsequent period of continued commitment, there has been no disposition of the case, either by discharge or voluntary admission, the hospital, facility, or person shall discharge the patient immediately, unless at least ten days before the expiration of the period the designee of the attorney general files with the court an application for continued commitment. 5122.15(H).

#### Section 4 Patient's rights

##### 4.1 Right to treatment

###### All

The head of the hospital or his designee shall assure that all patients hospitalized pursuant to the Revised Code shall:

- A) Receive, within twenty days of their admission sufficient professional care to assure that an evaluation of current status, differential diagnosis, probable prognosis, and description of the current treatment plan is stated on the official chart;
- B) Have a written treatment plan consistent with the evaluation, diagnosis, prognosis, and goals which shall be provided, upon request of the patient or patient's counsel, to the patient's counsel and to any private physician or licensed clinical psychologist designated by the patient or his counsel or to the legal rights service;
- C) Receive treatment consistent with the treatment plan. The department of mental health shall set standards for treatment provided to such patients, consistent wherever possible with standards set by the Joint Commission on Accreditation of Hospitals;
- D) Receive periodic reevaluations of the treatment plan by the professional staff of the hospital at intervals not to exceed ninety days;

E) Be provided with adequate medical treatment for physical disease or injury;

F) Receive humane care and treatment, including without limitation, the following:

- (1) The least restrictive environment consistent with the treatment plan;
- (2) The necessary facilities and personnel required by the treatment plan;
- (3) A humane psychological and physical environment within the hospital facilities;
- (4) The right to obtain current information concerning his treatment program and expectations in terms that he can reasonably understand;
- (5) Participation in programs designed to afford him substantial opportunity to acquire skills to facilitate his return to the community;
- (6) The right to be free from unnecessary or excessive medication;
- (7) Freedom from restraints or isolation unless it is stated in a written order by the head of the hospital or his designee, or the patient's individual physician or psychologist in a private or general hospital.

G) Be notified of their rights under the law within twenty-four hours of admission, according to rules established by the legal rights service. 5122.27.

#### 4.2 Right to refuse treatment

The chief medical officer, or in a nonpublic hospital, the attending physician responsible for a patient's care shall provide all information, including expected physical and medical consequences, necessary to enable any patient of a hospital for the mentally ill to give a fully informed, intelligent, and knowing consent, the opportunity to consult with independent specialists and counsel, and the right to refuse consent for any of the following:

- 1) Surgery;
  - 2) Convulsive therapy;
  - 3) Major aversive interventions;
  - 4) Sterilization;
  - 5) Any unusually hazardous treatment procedures;
  - 6) Psycho-surgery.
- 5122.271.

#### 4.3 Right to seek release

##### All

Any person detained pursuant to the Revised Code shall be entitled to the writ of habeas corpus upon proper petition by himself or a friend to any court generally empowered to issue the writ of habeas corpus in the county in which he is detained. 5122.30.

Upon request of a person involuntarily committed under this section, or the person's counsel, made more than one hundred eighty days after the person's last full hearing, mandatory or requested, the court shall hold a full hearing on the person's continued commitment. 5122.15(H).

#### 4.4 Personal rights and civil rights

##### All

No person shall be deprived of any public or private employment solely because of having been admitted to a hospital or otherwise receiving services, voluntarily or involuntarily, for a mental illness or other mental disability.

Any person admitted to a hospital or otherwise taken into custody, voluntarily or involuntarily, retains all civil rights not specifically denied in the Revised Code or removed by an adjudication of incompetence following a judicial proceeding.

As used in this section, "civil rights" includes, without limitation, the rights to contract, hold a professional, occupational, or motor vehicle operator's or chauffeur's license, marry or obtain a divorce, annulment, or dissolution of marriage, make a will, and sue and be sued. 5122.301.

The department of mental health shall provide and safeguard the following rights for all patients:

- A) The right to a written list of all rights enumerated in this chapter, to that person, his legal guardian, and his counsel. If the person is unable to read, the list shall be read and explained to him.
- B) The right at all times to be treated with consideration and respect for his privacy and dignity, including without limitation, the following:
  - 1) At the time a person is taken into custody for diagnosis, detention, or treatment, the person taking him into custody shall take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by that person;
  - 2) A person who is committed, voluntarily or involuntarily, shall be given reasonable protection from assault or battery by any other person.
- C) The right to communicate freely with and be visited at reasonable times by his private counsel or personnel of the legal rights service and, unless prior court restriction has been obtained, to communicate freely with and be visited at reasonable times by his personal physician or psychologist.
- D) The right to communicate freely with others, unless specifically restricted in the patient's treatment plan for clear treatment reasons, including without limitation the following:
  - 1) To receive visitors at reasonable times;



2) To have reasonable access to telephones to make and receive confidential calls, including a reasonable number of free calls if unable to pay for them and assistance in calling if requested and needed.

E) The right to have ready access to letter writing materials, including a reasonable number of stamps without cost if unable to pay for them, and to mail and receive unopened correspondence and assistance in writing if requested and needed.

F) The right to the following personal privileges consistent with health and safety:

1) To wear his own clothes and maintain his own personal effects;

2) To be provided an adequate allowance for or allotment of neat, clean, and seasonable clothing if unable to provide his own;

3) To maintain his personal appearance according to his own personal taste, including head and body hair;

4) To keep and use personal possessions, including toilet articles;

5) To have access to individual storage space for his private use;

6) To keep and spend a reasonable sum of his own money for expenses and small purchases;

7) To receive and possess reading materials without censorship, except when the materials create a clear and present danger to the safety of persons in the institutions.

G) The right to reasonable privacy, including both periods of privacy and places of privacy.

H) The right to free exercise of religious worship within the institution, including a right to services and sacred texts that are within the reasonable capacity of the institution to supply, provided that no patient shall be coerced into engaging in any religious activities.

I) The right to social interaction with members of either sex, subject to adequate supervision, unless such social interaction is specifically withheld under a patient's written treatment plan.

5122.29.

#### 4.5 Patient advocacy systems

##### All

A legal rights service is hereby created and established to protect and advocate the rights of mentally ill persons and persons with developmental disabilities, receive and act upon complaints concerning institutional and hospital practices, conditions of institutions for the mentally retarded and hospitals for the mentally ill, and to assure that all persons detained, hospitalized, discharged, or institutionalized, and all persons whose detention, hospitalization, discharge, or institutionalization is sought or has been sought under this chapter are fully informed of their rights and adequately represented by counsel in proceedings under this chapter and in any proceedings to secure the rights of such persons.

In regard to those persons detained, hospitalized, or institutionalized under the Revised Code, the legal rights service shall undertake formal representation only of those persons who are involuntarily detained,

hospitalized, or institutionalized, or who have requested representation by the legal rights service.  
5123.60.

The administrator of the legal rights service may, when attempts at administrative resolution prove unsatisfactory, initiate actions in mandamus and such other legal and equitable remedies as may be necessary to accomplish the purposes of this chapter. 5123.60(G).

## Section 5 Retention or recertification

### 5.1 Periods of commitment

Initial 90-day commitment; indefinite recommitments, each for a period not exceeding two years. 5122.15 (H).

### 5.2 Process for extending commitment

#### All

If, at the end of the first ninety-day period or any subsequent period of continued commitment, there has been no disposition of the case, either by discharge or voluntary admission, the hospital, facility, or person shall discharge the patient immediately, unless at least ten days before the expiration of the period the designee of the attorney general or the prosecutor files with the court an application for continued commitment. A copy of the application shall be provided to the respondent's counsel immediately.

The court shall hold a full hearing on applications for continued commitment at the expiration of the first ninety-day period and at least every two years after the expiration of the first ninety-day period.

Hearings following any application for continued commitment are mandatory and may not be waived.  
5122.15(H).

### 5.3 Special procedures for retention or recertification hearings

The application of the attorney general shall include a written report containing the diagnosis, prognosis, past treatment, a list of alternative treatment settings and plans, and identification of the treatment setting that is the least restrictive consistent with treatment needs. 5122.15(H).

Hearings are mandatory and may not be waived. 5122.15 (H).

APPENDIX C. DATA COLLECTION INSTRUMENTS USED IN  
THE COLUMBUS STUDY

Index

Interview Guide . . . . .	C- 3
Statement of Confidentiality and Project Ethics. . . . .	C- 7
Master Data Guide . . . . .	C-11
Observation Guide . . . . .	C-35



## INTERVIEW GUIDE

### PURPOSE

The ultimate goal for this research project is to generate information by which the civil commitment process can be made to function as well as possible. The purpose of this data collection is to obtain practitioners' opinions, advice, and suggestions about the civil commitment process, particularly about the process as it operates in their own localities. Our staff has become familiar with each state's statute and basic commitment process. We know, however, that systems do not always operate exactly as statutes prescribe. Situations occasionally arise that are not explicitly provided for in statute. People who work with a system on a day-to-day basis can explain why things are done as they are and can offer insights into how a system might be made to operate most smoothly.

This research is entirely qualitative, not quantitative. Our main purpose is not to ask how many, or even how. Our purpose is to ask why, how well, and how else. Assuming that we are aware of the basic statutes and procedures, questions do not call for descriptions of legal requirements or commitment process events, per se. Descriptions of law and process are requested only to help explain advantages, disadvantages, and possible modifications of a system. We seek information about what works best and why.

### APPROACH

This is not a typical research survey. The people with whom we are speaking have been chosen because they are well informed about the civil commitment process. Thus, our sample of interviewees is not a statistically representative sample; we therefore have no reason to count what percent of interviewees feel one way or the other. Our job in this research is to report on the unique and authoritative insights that these key people can impart. Because we are looking for what works best, the research has not been designed to show validly what is average or typical.

The questions in this data collection guide are open-ended. Multiple choice types of questions have been avoided so that interviewees will be free to formulate their own opinions rather than having their thoughts slotted into predetermined categories by the researchers. The only exceptions to this are the few background questions about each interviewee. Using these questions, we hope to group the interviewees into a small number of predetermined categories to help us understand how different types of people view different issues.

## ORGANIZATION

This data collection guide is a complete set of all the questions that are to be investigated. People will be interviewed individually and in homogeneous groups. Some of the questions also will be answered by project staff on the basis of their own empirical observations. Project staff have a separate observation guide to help them note important events and to key the observation information to appropriate questions in this data guide.

The interview covers many topics. The complete data collection flows in a more-or-less chronological order, as events occur during a typical commitment process. The questions unavoidably overlap each other to some degree, but repetition was minimized as much as possible.

All the questions are coded according to the types of people whom we expect will be able to give us the desired information. The codes and their meanings are these:

- J Judges, magistrates, special justices, and so on;
- C Clerks and other court personnel;
- L Law enforcement officers, probation officers, and so on;
- A Attorneys and patients' rights advocates;
- P Psychiatrists, psychologists, social workers, and so on;
- R Respondent, petitioner, family members and other lay individuals;
- O Direct observation.

Because of the length of the data collection guide, every question will not be asked of every interviewee. We will select a subset of questions to present in each interview, trying to optimize the match of peoples' areas of knowledge with the questions asked. Everyone will be invited, however, to discuss any aspect of the commitment process with which they are familiar or about which they have particular opinions or suggestions.

## ADMINISTRATION

Whenever possible, the data collection guide will be sent to interviewees prior to the actual interview. This will give people a chance to consider the issues that are to be raised, collect their thoughts, and prepare their answers in advance, if they wish.

Questions in the data collection guide are in normal type. Text printed entirely in capitals, LIKE THIS, is meant as instruction to interviewers.

Remember that this is only a data collection guide, not a dictum. Precise language in the questions is not important, and neither is the order in which questions are covered. The guide is simply a reminder to important issues and ideas that need to be discussed. More concern is to be given to understanding the answers than to writing them down thoroughly or verbatim. Immediately following an interview, interviewers will go back through their notes to write answers fully and in proper sentences and to be sure that there are no "loose ends." If necessary, telephone calls will be made to review particular comments or to check the exact meaning of unclear answers.

In this vein, the data guide is written in conversational style. We expect the interviews to be conducted as free-flowing discussions. The information will be condensed and cast into the "King's English" during the analysis phase.

Finally, we do not necessarily expect answers to every question that is asked. We recognize that people have concerns and expertise in some areas and not in others. If interviewees do not wish to answer a particular question, the question can be skipped and the interview can progress to the next topic.

#### CONFIDENTIALITY

A complete statement regarding confidentiality accompanies each data collection form and is to be reviewed prior to every interview. The most important point of that statement is repeated briefly here. That is, responses to this data collection effort (or staff observations) never will be reported with reference by name to any particular individual. Anonymity of private individuals will be maintained absolutely. The anonymity of public officials will be maintained to the extent that is possible; it is acknowledged that because of their positions and special information, it may not always be possible to present information reported by public officials in a manner that would make it impossible for knowledgeable people to determine that these officials were the source of the information.





## STATEMENT OF CONFIDENTIALITY AND PROJECT ETHICS

### Protecting Confidentiality

The reports that result from the information collected by interviews and observations will not identify individuals by name. Any information that reasonably could be expected to identify a private person will be deleted or disguised.

A list of public persons interviewed and the organization each represented will be included in the final report. In the report, where it is appropriate or necessary to identify comments or suggestions with an organization or person, generic descriptions will be used -- e.g., out-patient treatment personnel, attorneys, advocates, in-patient treatment personnel.

It is possible that persons knowledgeable about the mental health or legal communities could identify organizations and public persons representing them as sources of certain reported statements. We will make every reasonable effort to use multiple sources of information in order to reduce the probability of revealing the identity of particular public persons.

Information in our files will generally be deidentified. Personal identifiers will be attached to file materials only when necessary for some valid and important research purpose. We will keep all personally identifiable information in locked file cabinets. All remaining personal identifiers will be deleted or the papers destroyed at the conclusion of the project. Any requests for information that might identify an individual will be refused, unless needed for a valid and important research purpose, and then will be transmitted only after completion of a formal, written information transfer agreement, which will bind the receiver of the information, at the least, to the principles of this Statement of Confidentiality and Project Ethics.

To summarize, we will ensure the complete anonymity of private persons (patients, ex-patients, and families of same). The confidentiality of public persons and institutions will be protected to the maximum extent possible.

### Research Ethics

Our staff is guided by three principles of ethical obligations:

1. We are obliged to participants in protecting their privacy and accurately representing their responses;

## Statement of Confidentiality and Project Ethics

2. We have a duty to society, in that we do not waste funds on unnecessary research and that we make public our findings and recommendations; and
3. We are obligated to science and future researchers in conducting reliable and valid research, and documenting our methods and findings.

### Informed Consent

Prior to beginning any interview or observing any non-public event for purposes of this research, one of the following statements will be read. Data collection will not occur without the expressed consent of all interview and observation subjects of this research (or of their guardians or responsible spokespersons).

This statement will be read prior to beginning any interview.

We are from the National Center for State Courts. We are performing a project to help judges and mental health professionals understand and improve the process of ordering involuntary treatment for the mentally ill. We would like to ask you some questions. We greatly appreciate your help with this project. But, please understand that you may refuse to answer any questions that you wish and you may decide to stop this interview at any time. Also, you may interrupt us to ask about the project at any time, and we will answer your questions as fully as we can. Our project is being done according to a written statement of confidentiality and ethics. Your interview statements will be kept entirely confidential (FOR A PUBLIC OFFICIAL ADD: to the best of our ability). Copies of information about this project and of our statement of confidentiality and ethics are available for you to read if you wish. Do you have any questions to ask before we begin the interview?

Prior to observing hearing or prehearing activities, the following statement will be read to the senior court official in the jurisdiction. If he or she so directs, it will be read to any other persons as necessary or appropriate.

We are from the National Center for State Courts. We are performing a project to help judges and mental health professionals understand and improve the process of ordering involuntary treatment for the mentally ill. We would like the court's permission to observe hearings and other prehearing

## Statement of Confidentiality and Project Ethics

events. We will do this with the understanding that anonymity of persons will be maintained according to the project's statement of confidentiality and ethics. At any such time as any subjects of our observations object to our presence, we agree to stop such observations immediately unless we receive your specific permission to continue them. Copies of information about the project and of the statement of confidentiality and ethics will be available for you and any other persons to read at any time. We also will read this statement to all other persons whom you shall designate, if any. We greatly appreciate your help with this project. But, please understand that you may stop our observations at any time. Also, you and any other persons may ask questions about the project at any time, and we will answer your questions as fully as we can. Do you have any questions before we begin our observations?

Prior to any observations in or at a treatment facility, the following statement will be read to the facility director or other person with authority to consent to our project activities. If he or she so directs, it will be read to any other persons as necessary and appropriate.

We are from the National Center for State Courts. We are performing a project to help judges and mental health professionals understand and improve the process of ordering treatment for the mentally ill. We would like your permission to observe this facility and any examinations or treatment activities that are occurring, which are relevant to our work. We will do this with the understanding that anonymity of persons will be maintained according to the project's statement of confidentiality and ethics. At any such time as any subjects of our observations object to our presence, we agree to stop such observations immediately unless we receive your specific permission to continue them. Copies of information about the project and of the statement of confidentiality and ethics will be available for you and any other persons to read at any time. We also will read this statement to all other persons whom you shall designate, if any. We greatly appreciate your help with this project. But, please understand that you may stop our observations at any time. Also, you and any other persons may ask questions about the project at any time, and we will answer your questions as fully as we can. Do you have any questions before we begin our observations?



Involuntary Civil Commitment  
Master Data Guide

CHECK ONE

\_\_\_\_\_ Interviewer

\_\_\_\_\_ Observer \_\_\_\_\_

Date \_\_\_\_\_ City \_\_\_\_\_

Place \_\_\_\_\_

Subject of data collection. FILL APPLICABLE BLANKS

Individual interview:

Name \_\_\_\_\_

Title or Position \_\_\_\_\_

Observation:

Re Case \_\_\_\_\_

Event \_\_\_\_\_

Group interview: LIST NAME/TITLE OR POSITION

_____ / _____	_____ / _____
_____ / _____	_____ / _____
_____ / _____	_____ / _____
_____ / _____	_____ / _____
_____ / _____	_____ / _____
_____ / _____	_____ / _____
_____ / _____	_____ / _____

PROVIDE THIS INFORMATION FOR ALL SINGLE-PERSON INTERVIEWS. OTHERWISE, SKIP TO PAGE 4.

Before talking with you about specific issues, I would like to get some information about your familiarity with the commitment process and your general feelings about it.

I-1 How many years of experience have you had working in any capacity with the civil commitment of the mentally ill? \_\_\_\_\_

I-2 How would you describe your familiarity with the civil commitment statutes in this state? READ LIST OF ALTERNATIVES AND CHECK ONE BELOW.

I-3 How would you describe your familiarity with the civil commitment system and procedures in this state? READ LIST AND CHECK ONE

	I-2 Statutes	I-3 Procedures
Not at all familiar	_____	_____
Have partial or slight familiarity	_____	_____
Know well or know most	_____	_____
Know thoroughly or are expert	_____	_____

NOW DO THE INTERVIEW, BUT RETURN TO THE FOLLOWING TWO QUESTIONS AT THE VERY END.

For my final few minutes with you, I'm going to ask a couple of questions to help me summarize the way you perceive the civil commitment system in general.

I-4 I am going to read three statements about this state's present civil commitment system. Please indicate which statement you would most closely agree with. READ ALL AND CHECK ONE

\_\_\_\_\_ This state's system makes it too hard to get a person in for mental health treatment or to protect other people from the dangerous mentally ill.

\_\_\_\_\_ This state's system makes it too easy to get a person into treatment who may not really need it.

\_\_\_\_\_ This system strikes a good balance between the interests of committing a person to treatment and protecting the person's wish not to be treated involuntarily.

I-5 Similarly, I am going to read three statements about trends in your state's laws and procedures. Which one most closely reflects your feelings? READ ALL AND CHECK ONE

\_\_\_\_\_ This system seems to be changing to make it harder to get people committed to treatment.

\_\_\_\_\_ This system seems to be changing to make it easier to get people committed to treatment.

\_\_\_\_\_ This system seems to be pretty stable in this regard.





Prehearing Section

- JCL II-1  
R
- I would like to begin by discussing the way commitment proceedings get started. Considering the people who can initiate the process, the actions they must take to bring their complaint to the attention of the authorities, and any prepetition screening that is done...
- a. What do you think are the advantages of this system?
  - b. What are the disadvantages?
  - c. What changes would you suggest, and why?
- JC II-2  
A  
O
- a. Do petitions and certifications usually contain all the information required in them by statute?
  - b. IF NO: Why not? What is lacking?
  - c. ALL: What other information ought to be provided, and why?
- J II-3  
AP  
O
- As we understand the statute in your state, in order to initiate commitment, it is necessary to assert that respondent is mentally ill, \_\_\_\_\_ and/or \_\_\_\_\_.
- a. Is this correct?
  - b. What else is required?
  - c. Are these requirements typically met in initiating commitments?
  - d. IF NOT: Why not?
- J II-4  
AP
- a. In your opinion, how should these requirements be altered?
- JCL II-5  
APR
- In some places, people have worked out ways to get help for respondents before any formal hearing takes place. This can be a method for getting help without a formal commitment to treatment, or a way of avoiding the need to take the case through a formal hearing.
- a. Are there any ways to do this type of prehearing diversion here?
  - b. IF YES: What are they, and how well do they work?
  - c. ALL: Can you suggest some prehearing diversions or screening procedures that are not used here now, but could be?

J L II-6 a. Once a commitment process is begun, what circumstances  
AP or conditions must exist to justify taking a respondent into  
custody?

b. What changes, if any, would you suggest in this regard,  
and why?

J L II-7 a. Is there any way to avoid holding a respondent in custody  
A prior to an examination or prior to a hearing?

b. IF NO: Is there any reason why this can't be done?

c. IF YES: How and when does this occur?

J L II-8 a. How, exactly, is a respondent picked up or taken into  
AP custody when a commitment is initiated against him or her?

b. What are the strong points of this process?

c. What are the weak points?

J II-9 We know that states differ in their practices with regard  
AP to where they hold respondents prior to an examination or  
hearing. As examples, some states use hospitals or local  
clinics exclusively, while other states allow people to be  
held in jails or to remain at liberty in their homes.

a. What facilities are used here to hold respondents most  
frequently?

b. What are the advantages to using these?

c. What are the disadvantages?

d. What other facilities might be used, and what advantages  
would they offer?

J II-10 a. How long are respondents typically held in custody prior  
AP to receiving a hearing? PROBE FOR ANY COMMENTS ON TIME.

J L II-11 a. ASK THIS QUESTION ONLY IF ANSWER IS NOT ALREADY OBVIOUS FROM  
APR EARLIER QUESTIONS. Do you feel that prehearing detention practices in this system unnecessarily restrict respondent's right to liberty? Why?

b. Do you feel these practices adequately protect society from dangerous mentally ill people? Why?

c. Do you feel these practices are adequate to protect people who might be dangerous to themselves? Why?

d. Do you feel that the prehearing detention practices adequately meet the immediate treatment needs of the hospitalized person?

e. What changes or procedures can you suggest to improve these practices?

J II-12 Let's talk a bit about mental health examinations.  
AP

a. How many examinations do respondents typically receive prior to a commitment for treatment, and when do they occur?

b. Who does the examinations?

c. What information does an examiner usually have about the respondent prior to the examination?

J II-13 a. Does the examination process present any special  
APR considerations in this jurisdiction with respect to the examiner and the respondent in their relationships as a doctor and patient?

b. IF YES: How are these considerations dealt with and what are the effects?

c. ALL: Is this a particular problem at time of recertification?

J II-14 a. Do examination reports usually contain all the information  
AP required by law?  
O

b. What, if any, information is not contained in examination reports that you think should be included? Why would it be helpful to include this information?

- J  
AP  
O
- II-15 a. How frequently does a respondent assert or pursue a right to remain silent during an examination?
- b. Is every patient informed of the likely consequences of the examination, and of the right to remain silent, if there is one?
- c. IF YES: How and when is this done?
- d. ALL: What effect does this have on the examination?

- J  
AP
- II-16 a. How frequently do respondents request an independent examination?
- b. IF EVER: When an independent examination is requested, does it seem to make a significant difference to the proceedings? IF YES: How?
- c. IF NEVER: Do you feel that independent examinations should be done? IF YES: Why?

- JC  
A  
O
- II-17 The next few questions will be addressed to the matter of respondent's attorney. These questions will be related to the entire commitment process, not just the prehearing stage.
- a. Are all respondents represented by counsel?
- b. IF NOT: Why are some not represented?
- c. ALL: How is indigency determined?
- d. What method is used for the appointment of counsel?
- e. What qualifications are required for appointed attorneys?

- J  
AP  
O
- II-18 a. What do you see as the proper role of counsel for the respondent?
- b. Do attorneys tend to advocate strongly for the respondent's liberty interests in all cases, or is this true only when the attorney feels this is in the respondent's best interests?
- c. Do you think this should be changed, and why?

- JC II-19 a. Do you feel that most attorneys are sufficiently prepared  
APR in their roles as counsel for respondent?  
O
- b. IF NOT: What more should they be doing?
- c. ALL: What kinds of incentives or disincentives exist for counsel to be thorough?
- d. ALL: Do you think this should be changed, and why?
- JC II-20 a. Do respondents frequently reject the assistance of  
AP appointed counsel?  
O
- b. IF YES: How is this handled by the court?
- c. Are there ways in which this can be handled better?
- J II-21 a. How frequently will attorneys challenge an examiner's  
AP credentials or conclusions?  
O
- b. How frequently will attorneys object to testimony or admissibility of evidence at hearing?
- c. Do attorneys ever insist on psychiatrists using lay language?
- d. What is the effect whenever any of these actions is done?
- JC II-22 a. Do attorneys have prompt and sufficient access to all  
A information they need for respondent's case?
- b. IF NOT: What more do they need, and how can it be provided to them?
- c. ALL: Do attorneys make use of all the necessary information relating to the respondent that they have access to?
- d. IF NO: What important information might counsel be missing, and what can be done to correct this?

JC II-23 The next questions have to do with prehearing treatment.

AP

O

- a. Under what circumstances, if any, do respondents receive treatment prior to a formal disposition hearing?
- b. What types of treatment usually are given?
- c. Are respondents ever medicated when they are brought to the hearing? IF YES, ASK: Is this communicated to the court?
- d. IF YES: What problems or advantages does this create?
- e. ALL: What changes would you suggest?

J II-24 a. Do respondents ever assert a right to refuse treatment prior to disposition?

AP

- b. IF YES: What happens when respondent does so?
- c. ALL: What changes would you suggest in your system with regard to respondent's right to refuse prehearing treatment and why?

JC II-25 a. Under what circumstances might a case be dismissed or a respondent be discharged prior to a hearing?

AP

- b. If a respondent is discharged from the custody of a mental health facility prior to a hearing, is the case automatically dismissed, or might a hearing be held anyway?
- c. Do you feel that a hearing should be held, even after a person has been discharged by a mental health facility?
- d. IF YES: Why and in what manner?

JCL II-26 a. When and how is respondent notified of his or her rights, such as the right to counsel, to an independent examination, and to see copies of the petition and certification?

APR

O

- b. What more should be done, if anything, to inform respondents of their rights?
- c. Are there formal procedures for waiver of rights?

- CL II-27 a. Who is notified when a respondent is first taken  
AP into custody?
- b. What notifications are made if respondent is discharged or the case is dismissed?
  - c. What procedure is used for giving notices?
  - d. What other notifications ought to be made?
  - e. Are notifications given that are unnecessary?
  - f. What are your practices if a respondent requests that certain people not be notified?

JC II-28 a. We are interested in the payment of the costs of prehearing  
AP procedures. Could you tell me who is responsible for these costs, who usually pays them, and whether the regulations regarding payment have any important effects on the way the following are done:

1. Picking up the respondent
2. Detention
3. Examination
4. Treatment
5. Emergency hearings

b. Who is responsible for administration and collection of payments?

JCL II-29 Before going on to some questions about the hearing itself,  
APR I'd like to find out whether you have any comments to make  
0 about the early part of the process, in addition to the things we already have discussed.

- a. What aspects of initiating an emergency commitment procedure in your system are especially helpful or problematic, and what comments or recommendations would you make about them?
- b. What comments or recommendations would you care to make relating to initiating a commitment by the usual judicial hearing procedure in which no emergency is involved?
- c. IF APPROPRIATE TO STATE: Would you care to make any comments about your state's procedures for initiating a commitment that does not require judicial review?
- d. What strengths or weaknesses can you comment on regarding your system's ability to use conservatorships or guardianships to get help and treatment for the mentally ill?

- e. Do you care to comment on this system's procedures for initiating a commitment proceeding against a person who is currently a voluntary patient and who is seeking release?
- f. What particular strengths or weaknesses, if any, does your system have for initiating a commitment for treatment for prisoners?



The Hearing: Adjudicating Commitment

- JC III-1 a. The questions in this part of the interview will focus on  
A the hearing, per se. But first, let me ask some questions about how treatment might occur without a hearing. Excluding voluntary admission and treatment in emergency situations, is it possible for a person in this system to be committed for treatment without going through a formal hearing?
- b. IF YES: How does this happen?
- c. ALL: Do you see any reason why this might be advantageous?
- d. ALL: Would you suggest any changes in this regard?
- JC III-2 a. Does respondent ever have trouble obtaining a prompt  
A hearing?
- b. IF YES: What is the difficulty and how might it be overcome?
- c. ALL: What period of time do you feel is needed between the filing of a petition and holding a hearing?
- d. ALL: What difficulties would arise in holding the hearing prior to this time?
- JC III-3 a. Where are commitment hearings typically held?  
AP  
O
- b. What are the advantages and disadvantages of holding hearings there?
- c. Would you suggest having the hearings somewhere else?
- d. IF YES: Under what circumstances, and where?
- JC III-4 a. Is the respondent given an opportunity to elect voluntary  
APR admission prior to or during a hearing?  
O
- b. IF YES: Do you favor giving respondent this opportunity? Why?
- c. Before permitting a respondent to choose voluntary admission, does the court consider whether the respondent has the capacity to make treatment decisions?
- d. What changes would you suggest, if any, in the process of allowing for election of voluntary admission?

- J III-5 a. Our understanding of your civil commitment code is that  
AP a person must be found to be \_\_\_\_\_, \_\_\_\_\_  
O \_\_\_\_\_ and/or \_\_\_\_\_ in order to support  
a commitment. Is this correct? Is it interpreted this  
way in practice?
- b. Are these requirements typically met?
  - c. What other factors appear to influence the court's decision?
  - d. What specific facts typically are presented to the court to support these criteria and the existence of other factors?
  - e. What changes do you think are called for in the legal criteria supporting a commitment for treatment?

- J III-6 a. Does your system have a problem with chronically disturbed  
APR people who seem to be regularly in and out of treatment  
facilities? IF NO, GO TO III-7.
- b. IF YES: What exactly are the nature and cause of the problem?
  - c. Can you suggest a solution?

- JC III-7 a. How, if at all, does a consideration of less restrictive  
AP alternatives enter into the hearing? That is, how, if at  
O all, does the topic get raised and who presents testimony in this regard?
- b. (ASK ONLY IF NOT OBVIOUS FROM LAST ANSWER) Does the court dismiss the case if a less restrictive alternative is identified?
  - c. ALL: Do you feel that adequate attention is given to less restrictive treatment alternatives in the hearing?
  - d. IF NOT: What more, specifically, should be done?

- JC III-8 a. Do hearings typically include a state's attorney or district  
attorney?
- b. What is the best role for state's attorney in a commitment hearing?

- JC III-9 a. How frequently does a hearing include an attorney for the  
A petitioner?
- b. What advantage or disadvantage is there in having petitioner represented by counsel?
- JC III-10a. Under what circumstances are commitment hearings held before  
A a jury?
- b. What are your feelings about jury hearings in such cases?
- JC III-11a. Is respondent always present at the hearing?  
AP  
O
- b. IF NO: Under what circumstances would respondent not be there?
- c. ALL: What recommendations would you make about holding the hearing without respondent being present?
- J III-12a. How frequently is a person who examined respondent present  
O to testify at a hearing?
- b. IF NOT ALWAYS: How is examination evidence presented if the examiner is not present?
- c. ALL: What recommendations would you make about having examiners present at hearings?
- JC III-13a. In practice, how strongly does the examiner's testimony  
AP or evidence influence the court and, in effect, determine  
O the outcome of the hearing?
- b. Should this be different?
- c. IF YES: What can you suggest to change this?
- J III-14a. How frequently do psychiatrists and other examiners present  
AP a neutral assessment of respondent's condition, or how  
O frequently do they act as advocates either for or against respondent's commitment?
- b. What is the effect of this?
- c. How, if at all, should this be changed?

J III-15a. What other witnesses (such as petitioner) typically are at  
AP the hearings?  
O

- b. How do you feel about the effects or importance of having such witnesses at the hearings? BE SURE TO EXPLORE THIS QUESTION FOR EACH WITNESS MENTIONED IN III-15 a.

J III-16a. Who actually conducts the hearings, a judge or somebody  
A else?  
O

- b. During a hearing, does the judge [OR OTHER OFFICIAL ACTING IN THIS CAPACITY] typically take an active part in directing questions to respondent and witnesses, or does the judge usually just listen as the case is presented by counsel?
- c. Does this seem to be a good way to conduct the hearing? Why?
- d. IF ANSWER IS NOT ALREADY OBVIOUS, ASK: What would you recommend as the best role for a judge in a commitment hearing?

JC III-17a. Are hearings typically open or closed to the public?  
AP

- b. What are the problems or advantages to the way your court system handles this?  
O

JC III-18a. Does the court make a permanent record of commitment  
hearings? IF YES: How?

- b. Is a permanent record useful or necessary? Why?
- c. What additional costs are created by making a permanent record, and are the costs justified by the need?
- d. What policies would you recommend for retaining or destroying civil commitment records? Why?
- e. What policies ought to be followed in sealing the records and in allowing various parties to have access to these records? Why?

J III-19a. Under what circumstances are continuances granted?  
A

- b. What useful or harmful effects have you noticed as a result of granting continuances?  
O

- J III-20a. Does the court apply formal rules of procedure and rules  
A of evidence to the commitment hearing?  
O Procedure \_\_\_\_\_ Evidence \_\_\_\_\_
- b. What is your opinion about allowing hearsay testimony?
  - c. What is your feeling about allowing information about previous commitments as evidence?
  - d. Do you care to comment further about your system's practices regarding procedure, evidence, and testimony?

- JC III-21 I have some further questions about notification.  
A  
O
- a. Who is given notification of commitment hearings and at what time?
  - b. When, if at all, is respondent notified of the right to elect voluntary admission?
  - c. When, if at all, is respondent notified of the right to a jury?
  - d. What recommendations do you have regarding these or other notifications?

- JC III-22a. What provisions are made for paying costs associated with a  
A hearing?
- b. Who is responsible?
  - c. Who usually pays?
  - d. Do the regulations governing payments have any important effects on the way hearings are conducted?
  - e. What changes should be made in this regard?
  - f. Who is responsible for the administration and collection of payments?



Hearing: Determining Treatment

- J  
AP  
O
- IV-1
- a. During commitment hearings, is the question ever raised of respondent's capacity to make treatment decisions?
  - b. IF YES: Under what circumstances?
  - c. ALL: Is this question ever raised at a separate hearing?
  - d. IF YES: Under what circumstances?
  - e. ALL: Would you suggest any changes in practices with regard to raising this question?
  - f. IF YES: Why and what change?
- AP
- IV-2
- a. Is a ruling on capacity to make treatment decisions required if a person is to be committed for treatment?
  - b. Is such a ruling required before treatment can be administered involuntarily after a person has been committed?
  - c. What recommendations would you make about the need to rule on this question prior to commitment and treatment? BE CAREFUL TO GET ANSWERS TO BOTH ASPECTS OF THIS QUESTION, IF YOU CAN.
- J  
APR  
O
- IV-3
- a. How customary is it for treatment plans to be presented at hearings? IF NEVER, GO TO LAST PART OF THIS QUESTION
  - b. Who presents the plan?
  - c. Are treatment plans ever challenged in the hearing?
  - d. IF YES: With what effect?
  - e. What recommendations would you care to make about the presentation of treatment plans during commitment hearings?
- J  
AP  
O
- IV-4
- a. Who, if anyone, investigates and reports to the court about treatment alternatives?
  - b. What people or other resources does the judge usually rely on for information about commitment options?
  - c. What are the advantages or disadvantages of this?
  - d. What changes, if any, would you suggest?

- J  
AP  
O
- IV-5 a. What hospitalization alternatives are available to the courts?
- b. In practice, which of these alternatives are utilized?
- c. In ordering hospital treatment, to what extent does the court consider hospital resources and conditions?
- d. Are other alternatives needed?
- e. IF YES: Why, and what do you recommend?
- J  
AP  
O
- IV-6 a. Does the court ever commit a respondent to a nonhospital treatment alternative (such as an outpatient program or into another person's care and custody)?
- b. IF NO: Why not?
- c. IF YES: What specific alternatives are used?
- d. ALL: What recommendations would you make regarding commitment for treatment in a less restrictive, nonhospital setting?
- J
- IV-7 a. How does a judge decide which hospital or less restrictive alternative should be chosen in a particular case?
- J  
AP  
O
- IV-8 a. Does the court ever issue an order requiring a respondent to get a particular type of treatment, or requiring that treatment must be given for a specified minimum or maximum time?
- b. What are your feelings about the court issuing such orders?
- JC  
P  
O
- IV-9 a. Is a determination made of liability for payment of services when treatment is ordered? IF YES, ASK: How?
- b. Does this determination affect the types of services made available or the procedures for obtaining services?
- c. What changes need to be made in this regard?



Posthearing

JC V-1  
A

These questions will concern several issues that become important after the hearing is completed.

- a. What notifications, if any, are given if a respondent is committed? IF ANY, ASK: How are notices given?
- b. What notifications are given if a respondent's case is dismissed? IF ANY, ASK: How are notices given?
- c. Are these notifications sufficient and useful?
- d. IF NO: What changes would you suggest?

J V-2  
A

- a. How often does an appeal take place?
- b. Who usually begins this process?
- c. Are respondents adequately informed about their right to appeal?
- d. What assistance is available to respondents in bringing appeals?
- e. Is the appeal process easy enough to understand and use?
- f. IF NO TO c OR e, ASK: What changes would you suggest?

J V-3  
A

- a. If an appeal is brought, how soon is it usually heard?
- b. If an appeal is brought, how does this affect what happens to the respondent at the treatment facility?
- c. Under what circumstances, if any, can a respondent remain at liberty following a commitment order and pending appeal?
- c. Should this be changed?

J V-4  
P

- a. After a person is ordered for treatment, what options do hospitals or alternative treatment facilities use in deciding whether or not to examine or admit for treatment?
- b. Does this create any problems?
- c. What benefit comes from their having those options?
- d. What changes would you suggest?

- J V-5  
AP
- a. If a facility admits a patient pursuant to a court order, is it under any restrictions regarding the type or extent of treatment it may administer.
  - b. IF YES: What are the limitations?
  - c. ALL: Do you feel it is wise to place treatment constraints on a facility? Why?
  - d. ALL: What treatment-constraining powers should be exercised by the court (or by statute) in your opinion, and at what point in the process?
- J V-6  
AP
- a. What information, if any, does the treatment facility provide to the court to inform the court of the patient's progress?
  - b. IF ANY: What is the reason that this information is provided; that is, is it sent because it is required by statute, it was ordered by the court, or is it provided for some other reason?
  - c. What additional information does the court need, in your opinion?
  - d. When should such information be provided?
  - e. What does the court do with this information?
- J V-7  
APR
- a. In your opinion, is the court's oversight of what happens to a committed patient adequate, too much for the facility, or not demanding enough? Why?
  - b. What would you recommend?
- J V-8  
A
- a. What, if any, judicial sanctions are available for ensuring compliance by facilities or respondents with court orders regarding treatment?
  - b. How frequently are such sanctions used, and with what effect?
  - c. What recommendations do you have in this regard?

- J V-9 a. What difficulties arise regarding the transfer of patients?  
APR b. IF ANY: How could these problems be overcome?
- J V-10 a. What difficulties arise regarding patient discharge?  
APR b. IF ANY: How could these be overcome?
- A V-11 a. How far after the hearing is court-appointed counsel responsible to the client? That is, does the client-attorney relationship continue during appeal and treatment?  
b. What continuing role do you feel counsel should play following a commitment order?
- AP V-12 a. Following commitment, does a patient have the right to refuse treatment? IF YES, ASK: How is the patient notified of this right?  
b. Do you feel a patient should have this right?  
c. IF YES TO a, ASK: What difficulties does this cause, if any, and how can they be overcome?
- AP V-13 a. Under what circumstances does a treatment facility obtain informed consent prior to administering treatment to an involuntarily committed patient?  
b. How does this differ for voluntary patients?
- AP V-14 a. Excluding those who refuse it, are all patients who are admitted given some form of treatment?  
b. IF NO: Why not, and what should be done about this?
- AP V-15 a. In your opinion, are the civil and personal rights and safety of committed patients adequately protected?  
b. IF NO: Why not, and what should be done about this?

- J V-16 a. Do patients have access to and use a patient advocacy  
APR system to represent their interests?
- b. IF NO: Why not?
- c. IF YES: What makes the system useful to patients?
- d. ALL: Would you recommend any changes in making an advocacy system available? (IF YES) What?

- J V-17 a. How long are most commitment periods ordered for?  
AP
- b. To the best of your knowledge, how long does the average patient actually remain in treatment?
- c. To the best of your knowledge, are patients typically treated for a correct amount of time, given the help that they require?
- d. Should treatment periods be longer or shorter, in your opinion, and why?

- J V-18 a. In what ways can a patient seek a change in or release from  
AP treatment?
- b. What is the most effective way?
- c. Do you feel that patient's options for seeking change or release are too easy or too hard? Why?
- d. How often is a writ of habeas corpus used to seek release?
- e. What suggestions would you make concerning these avenues for treatment modification and patient release?

- J V-19 a. Are the review hearings effective and useful? Why is this?  
APR
- b. Do they differ in procedure from original commitment hearings, and how?

- J V-20 a. Are patients' commitment periods typically extended or  
AP recertified?
- b. What changes do you feel are necessary in the process for recertifying a commitment?

Observer \_\_\_\_\_ Date \_\_\_\_\_  
City \_\_\_\_\_ Place \_\_\_\_\_  
Event \_\_\_\_\_ Re Case \_\_\_\_\_

What to observe during PREHEARING PROCESSING

1. Who initiated the action? (II-1)
2. Where is the action taking place? (II-1)
3. What is being asserted about respondent? (II-3)
4. What documents and other evidence have been filed? (II-3)
5. Have all the necessary papers been filed? (II-2)
6. Do all filed papers contain all the required information? (II-2, II-3, II-14)
7. Is respondent informed of his/her rights? (II-15, II-23, II-25)
8. What options are considered and used for diversion, release, treatment? (II-5, II-7, II-9, II-22)
9. How and when is counsel appointed? (II-17, II-19, II-21)
10. Is treatment being administered? (II-22, II-23)
11. What notifications are given? (II-25, II-26)
12. Is respondent held or discharged? (II-24)



Observer \_\_\_\_\_ Date \_\_\_\_\_  
City \_\_\_\_\_ Place \_\_\_\_\_  
Event \_\_\_\_\_ Re Case \_\_\_\_\_

What to observe during HEARINGS

1. Where is the action taking place? (III-3)
2. Are proper petitions and certificates available to the court? (II-2, IV-3)
3. Do all filed papers have all required information on them? (II-2, II-14)
4. Are examiners' reports available to the court? (II-2, II-14)
5. Do examiners' reports have sufficient and required information (II-2, II-14, III-7, III-12)
6. Who is conducting the hearing? (III-16)
7. What is the role of the person conducting the hearing?
  - a. Does he/she direct questions? (III-16)
8. Is respondent's attorney retained or assigned? (II-17)
9. What are attorney-for-respondent's behaviors?
  - a. Does he/she appear to know the facts of the case well? (II-9, II-21)
  - b. Does he/she actively challenge examiners' qualifications evidence against respondent? (II-18, II-20)
  - c. Does he/she seem to have all the necessary information about LRAs? (II-21, IV-4)
10. Is respondent present? (III-11)
11. Is respondent medicated? (II-22)
12. How does the respondent behave? Does his or her behavior seem to influence the judge's decision?
13. What witnesses (including examiners) testify? (II-14, II-16)

What to observe during HEARINGS  
Page Two

14. Is respondent informed of his/her rights? (III-4, III-21)
15. Is respondent given opportunity to elect voluntary admission? (III-4)
16. Are necessary criteria met for commitment? (III-5)
17. What rules of evidence and procedure are applied? (III-20)
18. What is examiners' influence at hearing? (III-12, III-13, III-14)
19. Is a treatment plan presented? (IV-3)
20. Are alternative treatment possibilities discussed? (IV-4, IV-5, IV-6, IV-7)
21. Who presents information on alternative treatment options? (IV-3, IV-4)
22. Is question raised of capacity to make treatment decisions? (III-4, IV-2)
23. What are the roles of attorney for petitioner and state's attorney? (III-8, III-9)
24. Is there a jury? (III-10)
25. Is the public present? (III-17)
26. Are continuances granted? (III-19)
27. Are notifications given? (III-21)
28. Are provisions made for payment? (III-22)