

# The Commitment Process

## Mental Health, Mental Retardation, and Substance Abuse Commitments for Adults and Children in Iowa

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In Iowa, when people are “seriously mentally impaired” (likely to cause serious physical injury or serious emotional injury to themselves or others), a district court judge can order them taken into custody and placed in treatment until the likelihood of injury has passed. The order, said to be “involuntary” because the person doesn’t choose it, is commonly called “commitment.”

A person remains committed for as long as the court sees the need for treatment. When treatment is no longer needed, the court cancels the order and the person is released.

### People Involved in the Process

**Respondent:** The person the court is asked to commit. If the respondent is committed, from that point on, the person is called the patient.

**Applicant:** The person filing the request for commitment. This can be any interested person.

**Judge:** The court official who decides if someone is committed. In some counties, an attorney is appointed to act as judge. This person is called the Judicial Hospitalization Referee, or “referee” for short. The referee has the same authority as the judge. A commitment order by a referee can be appealed to the judge.

**County Attorney:** The attorney who represents the public and the applicant, but not the respondent. The county attorney presents evidence in support of the application for commitment.

**Court Clerk:** The court official who prepares requests, schedules hearings, and decides when information is complete.

**Court-appointed Attorney:** If the respondent cannot get his/her own attorney or afford one, the court appoints one. This attorney represents the respondent only.

**Advocate:** Each county provides for an independent person, called an “advocate,” to represent the interests of the patient. The advocate is not the patient’s attorney.

The advocate represents the patient from the time when the patient’s attorney is dismissed. The advocate reviews all reports and orders. If the person needs an attorney again later, the advocate will tell the court. If a person is committed, the advocate will

become involved with the court, patient, patient's family, and treatment facility. The advocate may continue working with the patient and the patient's family (with the patient's permission) after the commitment has ended and the patient has been discharged from treatment.

*Physician:* The doctor appointed by the court to evaluate the respondent. The physician may ask a mental health professional to help with the evaluation. The respondent is entitled to a separate examination by a physician of the respondent's choice. The physician will report in writing to the court clerk, who will give the report to the court and attorneys.

## **Hearing**

To decide whether to commit a person, the court holds a formal proceeding called a hearing. At the hearing, the judge meets with the attorneys, the respondent, and witnesses to review evidence and reports, and to decide whether to order commitment. The hearing, the reports, and the treatment are all confidential.

*Applicant's Role:* The applicant fills out the application with the court clerk. After that, the applicant's role may be limited. The applicant will be given the opportunity to testify at the commitment hearing as to his or her knowledge of the person for whom commitment is sought. The county attorney can be asked any legal questions the applicant has.

Because the hearing, the reports, and the treatment are all confidential, they are not shared with the applicant unless the applicant is the parent or guardian, or has the respondent's consent. With the consent of the respondent or patient, the applicant may have access to any information authorized in the consent.

In some cases a person who has been threatened can be notified. If the applicant believes a danger or threat exists to his or her safety or health, the applicant should immediately inform the clerk or county attorney.

## **Application Filed with Court Clerk**

Any interested person can file an application to commit another person with the clerk of district court in the county of the respondent's residence or where the respondent is presently located. The clerk will file the application, schedule the case for the court, and notify a judge (or judicial referee, depending on the county) to review the application. If the respondent is under age 18, the commitment process must be handled by Juvenile Court.

The application must include:

- A statement from the applicant describing the behavior that suggests the respondent is seriously mentally impaired.

*Immediate custody:* The applicant can ask to have the respondent taken into immediate custody. In the application, the applicant must state the facts to support the belief that the respondent is likely to injure another person or the respondent.

- A written statement by a licensed physician that supports the application;  
or  
one or more sworn witness statements that support the application.

If the physician's statement or witness statements are not available, and cannot be readily obtained, other information that proves the need for commitment may be approved as a substitute by the court clerk.

Notice: The respondent has the right to be notified by the court at least 48 hours before the hearing. To notify the respondent, the court has the sheriff give copies of the entire application for commitment to the respondent.

*Immediate Custody:* If immediate custody was requested and the judge agreed, the judge will order the sheriff (in writing) to take the respondent into custody until the commitment hearing. The hearing must occur within 5 days of the date the immediate custody order was signed. The court also usually orders an evaluation by a physician to occur within 48 hours. The person can be held in the custody of a person, hospital, or community treatment facility (but not jail or other criminal confinement).

*No Immediate Custody:* If immediate custody was not requested, the court will:

- Notify the county attorney of the application.
- Make sure the respondent has an attorney.
- Set a hearing date.
- Order that a physician examine the respondent within 48 hours of the time the application was filed and before the hearing.
- Inform the respondent's attorney of the application and actions taken so far. (The respondent's attorney will attend the hearing.)

- Inform the advocate, who can attend the hearing.

Note: The respondent may choose a physician to do a separate examination if desired. Any physician may ask a mental health professional to help with the examination. The physician will report in writing to the court clerk, who will give the report to the judge and attorneys.

Report: If the doctor's report says the respondent is not seriously mentally impaired, the judge may dismiss the application then. If the report says the respondent is seriously mentally impaired, the judge conducts a hearing.

### **Hearing**

At the hearing, the respondent has the right to be present and to testify. Only people necessary to the hearing may attend.

*Order:* If the respondent has "serious mental impairment," the judge will "commit" the respondent by ordering that the respondent be placed in a hospital, residential care facility, or to an outpatient service and that the respondent receives a complete psychiatric evaluation and treatment. After admission, the facility must give a progress report and recommendation to the court and attorneys within 15 days. The judge will use the report to decide whether to dismiss the commitment order, change the order, or hold another hearing.

If the respondent is placed in a hospital or residential care facility, he or she must stay until discharged by the facility or the court. The hospital will report to the court within 30 days of placement, and then at least every 60 days if the placement lasts longer than 30 days. The judge may change the reporting requirement to every 90 days. If the respondent is placed somewhere other than a hospital, the report to the court must be made at least every 6 months. The court uses the report to decide whether to dismiss the commitment order, change the order, or continue the order.

If a county will be asked to pay for all or part of the cost of the commitment, the place of commitment will be determined through the county Central Point of Coordination ("single entry point") process.

## **Discharge**

After the respondent is admitted to a hospital or service, the respondent is called a "patient." When the patient's condition is such that commitment is no longer necessary, the facility will discharge the patient and immediately report the discharge to the court. The facility may want to check with the attorneys and the court before discharging the patient.

Even if the patient has been discharged, if further treatment is needed the court can order a new commitment to out-patient treatment, a residential facility, or other appropriate placement.

The treatment activities and discharge are confidential. The applicant usually is not notified of the discharge unless the patient is returning to live with the applicant or the applicant is the patient's guardian. However, the applicant can be notified about the discharge if the patient gives written permission to notify the applicant.

## **Emergency Hospitalization**

If a person needs to be immediately held for protection and the court is not immediately available, a peace officer with reasonable grounds may, without being ordered by a court or without arresting the person, take the person to the nearest available appropriate facility. Also, someone other than a peace officer may take a person to a hospital and the hospital may, without the person's consent, order treatment necessary to preserve life or stop behaviors likely to cause injury. Any other treatment must have the person's consent. If necessary, the hospital will call the nearest judge, who will either give or deny permission to hold the person. If the person is held, the judge will visit the facility where the person is held, review the facility's report, and either direct the person be released or order a hearing and evaluation.

## **Appeal**

The respondent can appeal the commitment by contacting his or her attorney or advocate.

If the applicant wishes further action, the applicant should contact the county attorney.

## **Rights and Privileges**

Anyone detained or hospitalized has the right to:

- Prompt evaluation, a plan of treatment, and the needed treatment.
- Refuse certain chemical and shock treatments without the consent of a guardian, family members, or the court (except if the treatment must be given to preserve life or stop behavior that will injure someone).
- All constitutional, legal, civil, and any other rights and privileges the law allows as long as they do not defeat the necessary treatments.

## **Confidential Records**

All papers and records about commitment are confidential. They cannot be shared unless the court orders it or the patient or guardian signs a release. There are certain exceptions to allow the hospital to bill and for necessary state and county business. The doctor in the hospital is allowed to decide when it is appropriate to share information with the next of kin.

## **Sharing Information with the Family**

If the patient is under 18, confidential information can be shared with the family unless parental rights or the rights to communication have been terminated by a court.

If a person has a chronic mental illness, mental health information can be shared with a family member when:

- A physician or other person responsible for providing the person's treatment verifies that sharing is necessary to provide care or monitor the treatment.
- The family member is verified by the treatment professional to be directly involved in the care or monitoring of the care.

**For More Information:**

This brochure was prepared by the Iowa Department of Human Services in cooperation with the Office of the Iowa Attorney General for distribution by clerks of district courts and as general information for other interested persons. Questions and requests for further information may be directed to:

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