Civil Commitment

Understanding the Commitment Process in Brown County

Aging & Disability Resource Center of Brown County

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About this Handout

This handout outlines and explains commitment procedures in Brown County. It is intended as a resource for helping professionals and others who may be concerned about a person who has serious mental health issues.

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What is civil commitment?

Civil Commitment is a process in which the state deprives an individual of his/her personal freedom and ability to make treatment decisions in order to protect that person and/or others from harm.

In order to commit an individual for involuntary treatment, three conditions must be met. The person must be:

1. mentally ill, developmentally disabled, or drug dependent; AND
2. a proper subject for treatment; AND
3. dangerous as defined by state statutes

Dangerousness

According to Wisconsin State statutes, **dangerousness is defined in five ways**:

1. **Danger to self** due to recent attempts or threats of suicide or serious bodily harm.

- Attempts of suicide or bodily harm must be severe. Threats of suicide need to have clear, convincing evidence of method or means that would likely cause death (i.e., overdose, weapon, carbon monoxide).
- Serious suicide attempts will likely receive emergency medical treatment before detention at a psychiatric facility. Following emergency treatment, law enforcement can prepare an EM-1, if appropriate (that is, if the person continues to show evidence of danger to self or others).

2. **Danger to others** as shown by recent homicidal or other violent behavior, or by placing others in reasonable fear of violent behavior and serious physical harm due to a recent overt act, attempt, or threat.

- Unusual or bizarre behavior does not constitute dangerous behavior.
- A threat or act of harm by someone elderly and frail, or very young, may not be interpreted by the court as a considerable threat
- Threat of harm must be recent, usually within the past week or two.
- It's possible that a single threat might not be seen as significant enough to place a person in "reasonable fear of violent behavior." A *pattern* of threats and behavior is more likely to meet the dangerousness standard.

3. **Impaired judgment** as shown by a pattern of recent acts or omissions such that there is a substantial probability of physical impairment or injury to self.

- The Court may consider a pattern of activity (or inaction) dangerous if it demonstrated *both* that: 1. the individual is exercising impaired judgment and 2. the pattern is substantially probable to cause physical impairment or injury to the person.
- If there are reasonable services available in the community for the person's protection, the person isn't "dangerous" unless they are likely to refuse those services.
- If a person is appropriate for guardianship and protective placement, they can't be considered dangerous under this paragraph. Likewise, if a minor is appropriate for services under the Children's Code or the Juvenile Code, they can't be considered dangerous under this paragraph.

4. **Inability**, as shown by recent acts or omissions, **to meet basic needs for food, shelter, medical care, or safety** such that without prompt and adequate treatment, there is a substantial probability that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue.

- This standard (known as the "fourth standard") applies *only* if the individual's inability is due to mental illness.
- Usually means that, if a person cannot meet his/her basic needs, the serious injury, disability, disease or death *will occur at any moment* unless the person receives *immediate* treatment for his/her mental illness.
- Refusing to eat does not necessarily qualify as a danger.
- If there are reasonable services available in the community for the person's treatment and protection, there is no danger unless the person is likely to refuse those services.
- Again as in #3, if a person is appropriate for guardianship and protective placement, or if a minor is appropriate for services under the Children's Code or the Juvenile Code, they can't be considered dangerous under this paragraph.

5. **Fifth Standard**

- The "fifth standard" allows individuals with a history of mental illness, who need treatment for their mental illness but are resistant to accepting it, to

be committed for treatment before becoming violently dangerous or completely non-functioning.
- The requirements of the fifth standard are difficult to explain and each case is considered individually. Generally, it involves a mentally ill person's doctor requesting that the person be committed for treatment based on the person's inability to make an informed decision about treatment.
- There are questions regarding the Constitutional validity of the fifth standard and it is rarely used in Brown County.

How to start the commitment process

If a person is in need of treatment, refuses voluntary treatment, and meets one or more of the definitions of dangerousness, there are two ways to start the process to get the person admitted to a psychiatric facility for evaluation and treatment: **Emergency Detention** and **Three-Party Petition**.

Emergency Detention

If a person is attempting or threatening to hurt him/herself, or the person is acting in a seriously violent manner or making threats that place the average person in reasonable fear for his or her personal safety, **call the police or other law enforcement immediately**. The officer who responds to the call will decide whether or not to detain the person. The officer will base this decision on the officer's personal observations or the reports of reliable witnesses who observed the person's dangerous behavior. If the officer has cause to believe that the person meets the civil commitment standards, including one of the definitions of dangerousness, the officer will detain the person and complete a statement of emergency detention (EM-1). The EM-1 becomes the petition to begin the commitment process.

Law enforcement then transports the person to be detained to the Brown County Community Treatment Center (CTC). The EM-1 petition is given to the person and the facility when the person arrives at the CTC. The staff at the CTC then evaluates the person and determines whether grounds for continued detention exist.

- If grounds do not exist, the person will be discharged fairly quickly, sometimes even the same day.
- If grounds do exist, the case is scheduled for a probable cause hearing.
- In either event, the person must be discharged or a probable cause hearing must be held within 72 hours of the detention. *The 72 hours starts from the time the detention paperwork is signed and dated by the police officer* (not including Saturdays, Sundays and legal holidays). It is also possible for the person to **voluntarily** admit him/herself to the facility (see "What if the person agrees to treatment?" on page 6).

Three-Party Petition

Another way to begin the commitment process is by a petition prepared by the Corporation Counsel's office and signed by three people, commonly known as a three-party petition. This procedure is not frequently used in Brown County, as it is more cumbersome and time-consuming than EM-1.

In a three-party petition, all three petitioners must be adults, and at least one petitioner must have *first-hand* knowledge of the behavior, meaning s/he was present to observe the person's behavior and/or hear their statements. *All three petitioners must be available and willing to testify in person at both the probable cause and final hearings.*

A three-party petition can only be prepared by the Corporation Counsel's office. The steps for the process are:

1. After the initial information is received by the Corporation Counsel's office an attorney decides if a three-party petition is appropriate.

2. If it is, the attorney takes sworn statements from the three petitioners and other witnesses, if necessary. The attorney then compiles all the statements and information and drafts a petition.

3. If the attorney believes the fifth standard may be appropriate, approval from the State Attorney General's office is obtained before the petition is prepared. The petition must then be reviewed and sworn to be true by the three petitioners, and the attorney notarizes their signatures.

4. The Corporation Counsel's office presents the petition to a circuit court judge for review. If the judge believes that there are sufficient grounds alleged in the petition, s/he issues an order of detention.

5. The detention order is taken to the Brown County Sheriff's Department. The sheriff's department then attempts to detain the person as soon as their schedule allows, *which may or may not be the same day they receive the detention order*.

6. Upon detention, the person may need to be taken to a hospital for medical clearance. After clearance, the person is taken to the CTC.

7. Upon detention at the CTC, the person is given written notice of the hearing and of his/her rights, along with copies of the detention order and the three-party petition, and is also verbally informed of his/her rights by the staff.

8. The CTC staff then evaluates the person to determine if s/he is appropriate for treatment. *If staff determines the commitment is not appropriate, the person is discharged*. If staff determines the commitment is appropriate, the person is held until the probable cause hearing (which must be held within 72 hours, excluding Saturdays, Sundays, and legal holidays).

What happens during detention at the CTC?
Patients detained at the CTC are typically admitted for inpatient treatment. Upon admission, the person is assigned a social worker at the facility. The social worker coordinates services/treatment while the person is inpatient at the facility. The social worker will be the primary contact at the CTC for most families and friends of the patient. They will obtain releases of information, answer questions, facilitate discharge planning, work with psychiatrist, psychologist, case managers, service providers, etc.

What if the person agrees to treatment?
If the patient is appropriate for treatment at the facility, is admitted for treatment, and then subsequently agrees to comply with treatment at the facility **voluntarily**, it is possible for the emergency detention to be "dropped." The person must sign a consent form which, along with the report of the treatment received, must be filed with the Court. The treatment will subsequently continue at the CTC and there will not be a probable cause hearing, *provided the patient complies with treatment*. The patient will be discharged when stable.

Commitment: The Court Process

Probable Cause Hearing

If the person is not discharged after being evaluated at the CTC and is not an appropriate candidate for voluntary services, a hearing must be held within 72 hours (excluding Saturdays, Sundays, and legal holidays). This initial hearing is called the **probable cause hearing**.

Where and when is the probable cause hearing?

- A probable cause hearing is heard by a judge or court commissioner, and is usually held at the CTC.
- For adults, these hearings are generally open to the public, unless the person requests a closed hearing. Juvenile cases are closed to the public.

Who will be at a probable cause hearing?

- **The person has the right to be present at the hearing, but may also refuse to appear**. If the person refuses to appear, the Court determines how to proceed in the person's absence. If the person is represented by an attorney, the Court is likely to proceed without the person present.

- **An attorney from the Corporation Counsel's office**, known as an Assistant Corporation Counsel, will appear on behalf of Brown County and the State of Wisconsin to represent the interests of the public and prosecute the commitment action.

- **The person should be represented by an attorney**, who is usually from the State Public Defender's office (if the individual is indigent). If the person does not qualify for a Public Defender, s/he can have his/her own attorney, or the Court will appoint an attorney to represent the person (the person is then responsible for reimbursing Brown County for this legal representation to the extent that this is financially possible). Often, an attorney may not be immediately available and the hearing will need to be adjourned until the next scheduled day of hearings. The court may allow the person to represent him/herself if it is determined the person is capable of doing so. For juvenile hearings, the parents are allowed to be represented by counsel if they wish (at their own expense).

- **Anyone whose name appears on the EM-1 as a witness, or any petitioner on a three-party petition** is a potential witness and should be available to testify at the hearing. The assigned social worker will normally contact anyone whose testimony may be required at the hearing. If you are asked to appear as a witness, you should report to the CTC where an Assistant Corporation Counsel or the assigned social worker will talk with you before the beginning of the day's hearings. *Testifying is not mandatory—a witness can refuse to testify at the hearing if s/he chooses.*

What happens at a probable cause hearing?
The purpose of the probable cause hearing is to present evidence of why the person should be held in a secure facility for further evaluation, pending a final hearing. The person will be detained until a final hearing if the court finds that there is probable cause to believe that the person is:

- mentally ill, developmentally disabled, or drug dependent; AND
- a proper subject for treatment; AND
- dangerous as defined under "Dangerousness" on pages 2-4.

If the court does not find probable cause, the person is discharged from the CTC and the case is dismissed.

Settlement Agreements

Many cases are resolved through **"settlement agreements"** or "**hold opens**." Basically, these "agreements" include an agreed-upon treatment plan that is presented to the court at the probable cause hearing or the final hearing. The plans may include inpatient treatment, outpatient treatment, medication, day services, AODA treatment, or other suitable treatment.

If the court approves the agreement, the court proceedings are delayed, typically for 90 days. These agreements are commonly referred to as **"90 day hold open"** cases.

What happens during the 90 day "hold open"?
During this period, the person is required to receive treatment services as outlined in the settlement agreement. Brown County Department of Human Services (BC-DHS) is responsible for monitoring the "hold open" cases and will follow up with the person to determine if s/he is following the conditions of the settlement agreement.

What happens at the end of the 90 days?

- If the person follows the stipulations of the agreement, the court proceedings will be dismissed at the end of the 90 days.
- If the person does not comply with the stipulations, the individual may be detained and returned to the CTC. A hearing may be held that could result in a commitment or a revision of the original settlement agreement.

Final Commitment Hearing

If a settlement agreement is not reached and there is probable cause to detain the individual, a **final hearing** will take place.

Where and when is the final hearing?
The final hearing must be held within 14 days of the original detention. They typically take place at the CTC. It is possible for the person to request a jury trial; all jury trials are held at the Brown County Courthouse. Final hearings can only be heard by a judge. Hearings are generally open to the public, unless the person requests a closed hearing. Juvenile cases are closed to the public.

Who will be at the final hearing?

- The people in attendance will be similar to the probable cause hearing: the person and his/her attorney, an Assistant Corporation Counsel to represent the interests of the public and prosecute the commitment action, and any witnesses called.
- *If you testified at the probable cause hearing, you may or may not be required as a witness at the final hearing*. If your testimony is required, the Corporation Counsel's office will contact you.

What happens at the final hearing?
The person may be committed to the care of the CTC for up to 6 months if the court finds evidence that the person is:

- mentally ill, developmentally disabled, or drug dependent; AND
- a proper subject for treatment; AND
- dangerous as defined under "Dangerousness" on pages 2-4.

If evidence is insufficient, the person is discharged from the CTC and the case is dismissed.

After Commitment

What happens to the person once they are "committed"?
Patients on commitment are case managed by the BC-DHS. Depending on the needs of the patient, the BC-DHS may keep the person at the CTC or move him/her to a less restrictive facility, or even return the individual to his/her own residence. Typically, committed patients are inpatient at the CTC for very short periods of time. Mental health commitments typically last 6 months.

Can a commitment be extended?
Yes. If it appears that a commitment of longer than six months is required for an individual, prior to the expiration of the original commitment order, the Brown County case manager assigned to the case may request an extension of the commitment. If the individual is still meeting criteria and standards for commitment, s/he may be recommitted for up to one year. There is no limit on the number of times an individual can be recommitted.

For additional information, please contact the ADRC at (920)448-4300.

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