

COMMITMENTS:

What is an Involuntary Commitment?

Involuntary Commitment is a legal procedure by which a person is placed in the custody of the State Department of Mental Health for long-term treatment. This is done only if necessary, and after every effort is made to provide treatment for the person on a voluntary basis.

What elements must be present in order to commit a person?

Clear and convincing evidence that:

- a. the respondent is mentally ill; and
- b. because of the mental illness the person poses a real and present threat of substantial harm to themselves or to others; and
- c. respondent will continue to experience mental distress and deterioration of ability to function independently if not treated; and
- d. respondent is unable to make a rational decision regarding treatment.

What are some alternatives to involuntary commitment?

- a. outpatient treatment – The Probate Court may order that the respondent participate in outpatient treatment provided by a designated mental health facility.
- b. respite bed in a transitional home;
- c. group homes;
- d. voluntary hospitalization;
- e. nursing homes; or
- f. state homes.

This list of alternatives is not an exhaustive list. These alternatives vary as to the amount of supervision involved and whether the alternative is appropriate will depend upon the specific facts involved. Other than outpatient treatment these alternatives are voluntary and require the approval of the person sought to be committed.

Who may file a petition to initiate an involuntary commitment proceeding?

Any person may seek to have another person committed by filing a petition with the Probate Court in accordance with Section 22-52-1.2 of the Code of Alabama.

What is the procedure to file a petition for commitment?

The petitioner is the individual who comes before the Probate Court and asks that measures be taken regarding a mentally ill person, of at least 19 years of age. This is done in the county where the respondent is currently located. The petitioner is usually a family member, but any person may file a petition seeking commitment of another, provided that all the required elements are met. Once the petition is filed and probable cause is determined, the patient may be involuntarily confined in a designated mental health facility or a hospital. A hearing is then set, with notice given to all parties concerned, including the respondent. At the hearing, testimony will be provided by all necessary parties, including expert testimony. The Probate Judge then determines whether the criteria for commitment has been met. Attorneys are appointed for both petitioner and respondent and all hearings are open to the public, unless otherwise requested by respondent.

What must the petition contain?

Section 22-52-1.2

- a. Name and address of the petitioner; and respondent.
- b. Name and address of respondent's spouse, attorney or next of kin; and
- c. That petitioner has reason to believe respondent is mentally ill; and
- d. Petitioner's beliefs are based on specific behavior, acts; attempts or threats which should be specified and described in detail; and
- e. Names and addresses of other persons with knowledge of the respondent's mental illness or who may be called as his witnesses.

Must the Court appoint attorneys to represent the parties involved in an involuntary commitment proceeding?

- a. For the respondent: yes, if such person lacks the mental ability to secure the services of an attorney or if such person lacks the funds to employ an attorney.
- b. For the petitioner: yes, the Court must appoint an attorney to advocate the petition to commit. The petitioner may employ an attorney on their own to appear in lieu of the appointed attorney.
- c. If petition is denied, the petitioners may be required to pay all costs of the proceedings.

To whom must the Court send notice of the commitment proceeding?

Notice must be served on the respondent and the Mental Health Department or other facility where the petition seeks to have the person committed.

What is the procedure to be followed at the hearing?

- a. The respondent has the right to be present unless the right is waived in writing, or a determination is made that the respondent's presence would disrupt the proceedings.
- b. A hearing is to be held by the probate judge without a jury.
- c. The hearings are to be open to the public unless requested otherwise by the respondent.
- d. A full transcript of the hearing must be kept for three years from the date the petitioner is denied or granted.
- e. The Alabama Rules of Evidence apply.
- f. The respondent has the right to offer evidence, and to compel witnesses and the right to cross-examine.
- g. Respondent may testify in their own behalf but cannot be forced to testify against themselves.
- h. Commitment is granted only if the elements required for commitment are established by clear and convincing evidence.

What is the purpose?

The purpose of involuntary commitment is to provide psychiatric treatment for mentally ill individuals who have become a danger to themselves or others, and are refusing voluntary treatment. However, the court is ever mindful of the serious deprivation of liberty that this process necessarily involves. The Due Process Clause of the Fourteenth Amendment applies to all citizens, regardless of mental illness, and every effort is made to ensure that rights are not compromised and unnecessary treatment is never tolerated. The Probate Judge will always take the least restrictive measure possible to provide aid to an individual with a mental illness.

What are the results of the hearing?

If commitment is granted, the order shall be entered for outpatient treatment or inpatient treatment. The least restrictive alternative necessary and available for the treatment of the respondent's mental illness shall be ordered. Inpatient treatment may be ordered at a state mental health facility or a designated mental health facility. Outpatient treatment may be ordered at a designated mental health facility if said facility consents to treat the respondent on an outpatient basis.

Why must the preceding procedure be rigidly followed?

The preceding procedure sets out the minimum requirements necessary for the commitment process to be constitutional under the procedural and substantive due process clause.

What follows an initial commitment?

- a. Initial commitment orders valid for up to 150 days.
- b. State must file a petition for renewal within 30 days of expiration of initial order, stating in detail reasons for renewal.
- c. No renewal shall exceed one year.
- d. Respondent must be released if renewal petition is not filed or is denied.

Evidence:

Expert witnesses testify on a petition to commit since the petitioner must prove that the person is mentally ill and other elements that would seem to call for an opinion beyond that of a family member or friend.

A family member or friend may testify as to their opinion on a person's mental illness as long as they have had adequate opportunity to observe that respondent's conduct is either normal or abnormal behavior. A licensed general practitioner of medicine is considered an expert under Alabama law and may render expert testimony on a person's sanity.

Must guardian ad litem be appointed to aid the person sought to be committed?

Yes, the court must appoint guardian ad litem who is an attorney to represent and protect the rights of the respondent.

THIS INFORMATION, WHICH IS BASED ON ALABAMA LAW, IS TO INFORM AND NOT TO ADVISE. NO PERSON SHOULD EVER APPLY OR INTERPRET ANY LAW WITHOUT THE AID OF A LAWYER WHO ANALYZES THE FACTS, BECAUSE THE FACTS MAY CHANGE THE APPLICATION OF THE LAW.

TAMMY BROWN
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