

Three Party Mental/Alcohol Commitment Procedure

I. Introduction

The Sheboygan County Health and Human Services Department assists Sheboygan County residents by providing quality mental health and AODA treatment, counseling and referral services. This treatment can be provided both on a voluntary and involuntary basis. Voluntary services are available by appointment during regular business hours. Involuntary treatment must be court ordered.

Sheboygan County will only pursue involuntary alcohol commitment for persons for whom a recent physician's statement can be submitted indicating that the individual is likely to die unless alcohol treatment is provided. This person must be at risk of death either due to biological medical complications or physical injuries as a result of alcohol consumption.

Human Services staff are on-call during the week and able to meet with family members and friends to discuss treatment options for a person who seems to be in need of help but unwilling to come in voluntarily. Staff persons are also available 24-hours a day at the Crisis Line by calling (920) 459-3151. In the case of an emergency it is always best to call 911 immediately.

If after discussing the situation with Human Services staff it is determined that there is no appropriate alternative other than involuntary treatment, assistance will be provided in drafting the necessary legal documents.

II. General Overview of Court Process

Under Wisconsin Statutes Chapter 51, also known as the Mental Health Act, three adults may come together and could petition the court for the involuntary commitment of an individual alleged to be either mentally ill, drug dependent, or an alcoholic and dangerous to themselves or to others. The law states that three adults must formally petition the court and at least one of the petitioners must have firsthand knowledge of the person's behavior whose commitment is being sought. The petition must be approved and filed by the county attorney or corporation counsel. This attorney reviews the petition as well as the required affidavits of the petitioners to make sure that the legal criteria for commitment can be proven. Some petitions may not meet either the legal criteria and/or criteria established by the Sheboygan County Health and Human Services Department.

Each of the petitioners with personal knowledge must supply a statement known as an affidavit. An affidavit is a sworn statement. Anyone that knowingly makes false statements in an affidavit may be found to have committed perjury. Petitioners need to understand that they may be called to testify in court regarding the statements made in their affidavit.

The judge, upon receipt and review of a petition with affidavit(s), has two options: 1) the petition may be dismissed based on insufficient grounds stated in the affidavits, or 2) an order for the detention and/or pick-up of the alleged mentally ill, drug dependent, or alcoholic person may be signed. In signing the detention order, the court makes a finding that there are enough grounds to proceed with the commitment process. In this case, a hearing has to be held within seventy-two (72) hours (excluding holidays and weekends) of the time that the individual is being involuntarily detained at the designated treatment facility.

The individual has an attorney appointed to represent them, (but may also choose to represent themselves) is given a copy of the petition and affidavits, advised of the proceeding pending, and advised of rights they is entitled to as a result of the law.

The first hearing held is called a probable cause hearing. The purpose of this hearing is to verify the statements made in the affidavits and any other testimony that is entered, and to show that there is probable cause, or a good reason to believe that the individual meets the criteria under the law for commitment. At this hearing, the individual is represented by his attorney, and the petitioners are represented by the Assistant Corporation Counsel.

The petitioners must appear and will be asked questions regarding their affidavits and will have to testify face-to-face in front of the subject. The patient's attorney may cross examine the petitioners to ensure that the individual's rights are protected under the law, that the statements are accurate and factual, and may present whatever witnesses are felt necessary to challenge any of the statements if necessary. At this hearing, two possible outcomes can occur. The court commissioner or judge may dismiss the matter either because the patient indicates that he is willing to seek treatment voluntarily, or because grounds for further involuntary detention are not sustained. The other option is to order a temporary commitment for a period not to exceed fourteen (14) days. During this period of time, the individual may be placed in the hospital or any other type of treatment program that is felt to be least restrictive to his environment and yet able to meet his needs. During this period of time, a physician is appointed to examine him so that medical evidence can be submitted at the final hearing.

The final hearing is held within fourteen (14) days of the initial date of detention. The individual has a right to a jury trial for this hearing and again, the three petitioners must appear to testify regarding their statements. The hearing basically involves the same process. However, at this hearing, the medical testimony of the physician appointed to examine the individual is also entered. At this hearing, it must also be shown that there is no suitable alternative to involuntary treatment. At this hearing, again, the judge can either allow the person to continue in treatment voluntarily, order the matter dismissed because of lack of ability to meet the legal standard for involuntary commitment, or order a commitment. If committed, the person shall remain in custody of the Health and Human Services Department for treatment for a period set by the court, but not to exceed six months for mental illness and drug addiction and ninety (90) days for alcohol treatment. At the end of the period set by court, discharge is automatic unless the Board obtains a court order for an extension of commitment.

III. Drafting an Affidavit

An affidavit is a sworn statement containing specific details to support a petition for involuntary commitment. The person submitting an affidavit must keep in mind the difference between hearsay and personal knowledge. The individual also must refrain as much as possible from drawing conclusions, but rather, stick to the facts. Affidavits should be specific as to time, place, and events. However, they are not relevant to the commitment process unless they are based on actual behaviors.

Therefore, when a petitioner is completing an affidavit, they should address themselves to the four criteria under the law and be as specific as possible as to behaviors that meet those four criteria. A summary statement indicating why the petitioner feels commitment is needed is the appropriate place for the petitioner to indicate their feelings and emotions. It should also be mentioned that the law requires that these four criteria have been met because of behaviors that have occurred within the past 12 months.

An affidavit should begin with the word "affidavit" on top of the paper. Following this should be the first paragraph, which should appear as stated below:

I, (name), of (address), wish to make the following statement in the matter of (patient's name), my (relationship, e.g., friend, spouse, relative, etc.). In making this statement, I hereby attest that the facts contained herein are true and correct.

Next in the affidavit should appear a brief paragraph(s) supplying specific facts to support each of the four criteria. Between the three petitioners, the four criteria must be met. Therefore, if one of the petitioners is unable to address themselves to one of the specific areas, the entire area should not even be dealt with in the affidavit. Be sure to include dates, times, and places as much as possible.

The final paragraph in the affidavit should be a brief statement of why you are seeking the individual's commitment.

The affidavit should be signed, and the signature should be notarized. By notarizing your signature and by your signing it, you are essentially swearing to the information placed on the affidavit. Because of this, any false statements included in the affidavit could be construed as perjurious, and consequently, you could be held responsible for this in a court of law. If an affidavit covers more than one page, the first page should be signed but does not need to be notarized. Simply the end of the affidavit needs to be notarized.

Contained in the next few pages are brief guidelines or questions you might ask yourself in making a statement. Also enclosed is a sample affidavit using fictitious names, which is reflective of typical affidavits received.

A. Person Alleged to be Mentally Ill or Drug Dependent

The affidavit contains particular facts and statements that have been observed or are known by the petitioners that support the legal standard necessary for commitment. After each standard are questions which should prompt specific supportive examples.

1. The individual is mentally ill or drug dependent.
 - Has the individual ever been diagnosed or treated for mental illness? For example, has a physician ever diagnosed the individual as depressed, schizophrenic, or treated the individual with medication for anxiety, stress, hallucinations, etc?
 - Is the individual reality oriented, knowing who they are, where they are, and the time and situation around them?
 - Has the individual ever been diagnosed as chemically dependent or been treated for chemical dependency?
 - Has the individual ever been considered developmentally disabled by any educational or governmental agency?

2. The individual is dangerous because he or she does any of the following:
 - a. Evidences a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.
 - Has the individual talked about killing self, wishing he/she were dead, saying that others would be better off without him/her, or statements like, "Things

will never be okay.”

- Has the individual closed up matters so that one might believe that they see their life as ending soon?
- Does the individual have serious accidents or participate in activities that might lead to a critical accident?
- Are medications being saved for eventual use in a suicidal attempt?
- Are there signs of personal injuries, such as cuts or bruises that might be self-inflicted?
- Is there a history of previous suicidal attempts?
- Does the individual handle dangerous weapons or use weapons on inanimate items as though they were human?

b. Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm.

- Has the individual verbally threatened others or made gestures of harm?
- Has the individual warned that physical harm might be one of his/her options?
- Does the individual have a preoccupation with weapons or violent activity and suggest that this might be an option for dealing with situations?
- Does the individual have a history of harming self or others?

c. Evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself.

- Does the individual fail to take necessary medication or keep necessary medical appointments?
- Does the individual neglect simple safety precautions?
- Does the individual endanger themselves by failing to dress appropriately for the temperature or situation?
- Does the individual overuse medications or use them in conjunction with other drugs or alcohol?
- Are there instances where the individual loses control and behaves in such a way that injury could occur in self or others?
- Does the individual indicate that he/she is aware of the consequences of their actions?

d. Evidences behavior manifested by recent acts or omissions that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter, or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness.

- Does the individual have the judgment to eat nourishing meals, dress appropriately, and seek proper medical attention when needed?
- Is the individual capable of making appropriate judgments regarding the safety of their environment?

B. Person Alleged to be an Alcoholic

1. The individual habitually lacks self-control as to the use of alcoholic beverages.

- How much does the person drink, how often, when, where, and how has their pattern of drinking increased over recent months or years?
- Have they promised to quit drinking and failed to follow through or promised to cut down and failed to follow through?
- How often or frequently are they intoxicated when they do drink? Have they seemed to lose the ability to drink moderate amounts of alcohol?
- Have they been treated for alcoholism only to return to drinking?

2. Uses alcoholic beverages to the extent that their health is substantially impaired or endangered.

- Have they been treated for alcoholism in the past? If so, did they have accompanying medical complications related to drinking? What did their physician have to say about these? What did their physician say about the impact of drinking on these?
- Do they currently have any physical difficulties, such as a heart problem, liver difficulties, pancreatitis, ulcers, or physical symptoms suggestive of an illness that may be related to their drinking?
- Do they eat properly?
- Have they vomited blood, passed blood in stools, suffered from frequent bouts of diarrhea or vomiting?

- How do they look now compared with years ago? Have they aged more quickly? Does their general physical appearance appear worse?
 - Do they complain of any physical problems, pains, etc.?
 - Do they shake, have memory blackouts, etc.?
 - Have they been hospitalized in a state of acute alcohol intoxication? If so, how many times, when, and where?
 - Do they eat regularly? Have they not been eating when drinking?
3. Uses alcoholic beverages to the extent that social or economic functioning is substantially disrupted.
- Do they have a job? If no, when did they last work and what led up to them losing their job?
 - If they have a job, have they been regular on it, or have they missed employment due to being hung over or intoxicated?
 - Do they drink prior to going on the job?
 - Have they had any warnings from supervisors or had any other job difficulties that might be related to drinking?
 - What is the financial impact of their drinking on their family or themselves?
 - How has their drinking disrupted social relationships in the family, in the community, at church, on the job?
 - Are they divorced? If so, what led up to the divorce? If remarried, what contributed to their first divorce?
 - Have they had any difficulties, arrests, other indications, or socially acting out, getting into fights, etc.?
4. As a result of the use of alcohol, has a pattern of conduct which is dangerous to themselves or others.
- A. Dangerous to others:
1. Have they threatened, attempted, or inflicted physical harm on any other individuals while under the influence of alcohol? This could be by use of their fist, with use of a gun, pointing a gun at someone, threatening to

shoot someone, threatening to kill someone, etc.

2. Has their thinking grown to the point where it may also coincide with these threats? For example: paranoid thinking, thinking people are after them, etc.
3. Do they drive a car while intoxicated? If so, how often, when, and have they been arrested for drunk driving, had accidents, or in any other way had an unusual case of being highly risky on the highway?
4. Do they smoke cigarettes when drinking? If so, how are their habits while smoking a cigarette? Are they a risk of burning a house down?
5. Do they lose their temper, either hitting spouse or children or both? Do they hit other family members? Have they thrown objects or in any other way potentially or actually inflicted physical harm.

B. Dangerous to self:

1. Do they have a medical condition which could become eminently fatal if drinking? For example: phlebitis, extensive liver damage, a severe heart condition.
2. Have they ever consumed alcohol to the point that they were transported to a hospital unconscious because of an overdose of alcohol?
3. Do they become depressed? If so, how do they voice this? Have they ever talked about life not being worth living or about killing themselves?
4. Have they ever attempted suicide or threatened suicide?
5. Do they drive a car while intoxicated?
6. Do they fall down? Have they injured themselves in falling?
7. Have they ever exposed themselves to the elements in such a manner as to place their life in danger, i.e., passing out outside in the snow?
8. Have they had severe physical problems for which they have refused to seek medical treatment?