



Civil Commitment

Prepared by: Steve McCarthy, Senior Staff Attorney

A civil commitment is the involuntary restriction of an individual's liberty by a civil proceeding on the basis that the individual is in need of treatment or care for certain mental health, developmental disability, or substance dependency issues in order to protect the individual or others from harm. Very generally speaking, civil commitment is a two-step process: first, an individual is detained pursuant to various actions for detention; and second, a court makes certain determinations, including whether probable cause exists for civil commitment, and whether the individual meets the criteria for continued civil commitment. Throughout the proceedings, the individual must be afforded the least restrictive treatment appropriate to the individual's situation.¹

CRITERIA FOR COMMITMENT

An individual may be subjected to a civil commitment if they meet all of the following statutory criteria:

- The individual is either mentally ill, developmentally disabled, or drug dependent.
- The individual is a "proper subject for treatment," meaning capable of rehabilitation.
- The individual is "dangerous" as defined by statute. Though the statutes include various detailed definitions of "dangerous" that qualify, they all typically require a substantial probability of physical harm, impairment, or injury to the individual or others.²

DETENTION AND INITIATION OF PROCEEDINGS

Civil commitment proceedings may begin with any of three actions, each described in more detail below, that may result in the detention of an individual:

- A petition for civil commitment is signed by three adults, at least one of whom has personal knowledge of the conduct of the subject individual. This is known as a "three-party petition."
- A law enforcement officer detains an individual on the basis of observed behavior or reliable witness accounts. This is known as "emergency detention."
- An individual who was voluntarily admitted to a treatment facility is subsequently denied his or her request to be discharged.

"Three-Party Petition"

Commitment proceedings may be initiated against an individual by filing a petition for examination. The petition must be signed by three adults, at least one of whom has first-hand knowledge of the conduct that forms the basis for the petition.

The law requires that the county corporation counsel represent the interests of the public in all civil commitment proceedings, including the drafting of all necessary papers related to the action. However, if the corporation counsel does not believe that the facts in the petition constitute probable cause for commitment, corporation counsel must inform the person seeking the petition that they may either discontinue pursuing the involuntary commitment or request that corporation counsel file the petition under a limited appearance. Though the court still has authority to grant any petition, the practical effect of a limited appearance by corporation counsel is often that the petition will not be granted.³

After a petition is filed, the circuit court has 24 hours to review the petition. If the court believes that the individual is mentally ill, developmentally disabled, or drug dependent, and eligible for commitment, it

may issue an order for emergency detention by law enforcement or it may notify the individual of the filing of the petition and schedule the matter for a probable-cause hearing.⁴

Emergency Detention

A law enforcement officer may take an individual into custody directly from the community on the basis of observed behavior or reliable witness accounts that the individual evidences a substantial probability of physical harm, impairment, or injury to the individual or others. Upon approval of the county after a crisis assessment by a mental health professional, and upon a belief that the individual will not consent to treatment, the officer may transport the individual to a detention facility and file a statement of emergency detention with the facility at the time of admission, and with the circuit court immediately thereafter.⁵

Voluntarily Admitted Patients

The director of an approved inpatient treatment facility or a state inpatient treatment facility may approve the voluntary admission of an adult upon an evaluation that the adult is mentally ill, developmentally disabled, or drug dependent, and has the potential to benefit from inpatient treatment or care. The director of the facility may refuse the individual's request to be discharged if the director believes that the individual meets the statutory criteria for commitment. In such a situation, the director may detain the individual and file a statement of emergency detention with the circuit court.⁶

PROBABLE-CAUSE HEARING

Within 72 hours of an individual's detention under any of the circumstances described above, the circuit court in the county in which the individual was detained must hold a preliminary hearing, known as a "probable-cause hearing." The purpose of this hearing is to determine if there is probable cause to believe the allegations made in the petition. If the court finds no probable cause, the case is dismissed and the individual is released. If the court finds probable cause, it must schedule a commitment hearing on the involuntary commitment, unless the individual voluntarily agrees to receive treatment.⁷

COMMITMENT HEARING

Following a finding of probable cause for commitment at a probable-cause hearing, the court generally must schedule a final commitment hearing to take place within 14 days of the detention. Pending that hearing, the court must appoint two mental health professionals to personally examine the individual and make a written report of those examinations to the court. The petitioner must prove all allegations by clear and convincing evidence. At the conclusion of the hearing, the court may either dismiss the petition and release the individual, or order the individual committed to the care of the county.⁸

COMMITMENT

An individual ordered involuntarily committed is taken into the care of a county health department for appropriate services. The initial order for commitment may not exceed six months. Subsequent orders renewing the commitment may not exceed one year. The individual may be kept inpatient at a county facility, moved to a less restrictive facility, or returned to his or her residence if appropriate.⁹

¹ The procedures for civil commitment differ in some respects for inmates and juveniles and in Milwaukee County. This issue brief does not address those differences.

² s. 51.20 (1) (a), Stats.

³ s. 51.20 (4), Stats.

⁴ s. 51.20 (1) (b) and (c), and (2), Stats.

⁵ s. 51.15 (1), (2), and (5), Stats.

⁶ ss. 51.10 (5) (c) and 51.15 (10), Stats.

⁷ s. 51.20 (7), Stats.

⁸ s. 51.20 (9), (10), and (13) (e), Stats.

⁹ s. 51.20 (13), Stats.