

## Involuntary Commitments

**WHAT IS AN INVOLUNTARY COMMITMENT?** A procedure whereby a person is involuntarily placed in the custody of the State Department of Mental Health for treatment.

**WHAT ELEMENTS MUST BE PRESENT IN ORDER TO COMMIT A PERSON?** Clear, unequivocal and convincing evidence that:

- the respondent is mentally ill; and
  - because of the mental illness the person poses a real and present threat of substantial harm to himself or to others; and
  - respondent will continue to experience mental distress and deterioration of ability to function independently if not treated; and
  - respondent is unable to make a rational decision regarding treatment.
- under *Lynch v. Baxley*, another element that is required is evidence that a person has actually been dangerous in the recent past and that such danger was manifested by an overt act, attempt or threat to do substantial harm to himself or another. This recent overt act requirement along with the clear, unequivocal and convincing evidence was reemphasized in *Wyatt v. King*. Order dated December 31, 1991.
- treatment is available for the person's mental illness or confinement is necessary to prevent the person from causing substantial harm to himself or to others; and
  - commitment is the least restrictive alternative available.
- 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 MUST THE PETITION CONTAIN?**

- name and address of the petitioner; and
- name and location of respondent's spouse, attorney or next of kin; and
- that petitioner has reason to believe respondent is mentally ill; and
- petitioner's beliefs are based on specific behavior, acts, attempts or threats which are described in detail; and
- names and addresses of other people with knowledge of the respondent's illness or who observed the person's overt acts and who may be called as his witnesses.

**WHERE IS THE PETITION FILED?** In the probate court in the county where the respondent is located.

**IS EXPERT TESTIMONY REQUIRED IN AN INVOLUNTARY COMMITMENT HEARING?** Although not required, it is advisable to have expert testimony to support 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 lay person.

A lay person may testify as to their opinion on a person's sanity as long as they have had adequate opportunity to observe that respondent's conduct and have 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 A GUARDIAN AD LITEM BE APPOINTED TO AID THE PERSON SOUGHT TO BE COMMITTED?** Yes, the court must appoint a guardian ad litem who is an attorney to represent and protect the rights of the respondent. **MUST THE COURT APPOINT ATTORNEYS TO REPRESENT THE PARTIES INVOLVED IN AN INVOLUNTARY COMMITMENT PROCEEDING?**

- 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.
- for the petitioner: yes, the court must appoint an attorney to advocate the petition to commit. The petitioner may employ an attorney on his or her own to appear in lieu of the appointed attorney.
- 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?**

- the respondent has the right to be present unless waived (in writing) or presence would keep hearings from being conducted in an orderly manner.
- a hearing is to be held by probate judge without a jury.
- the hearings are to be open to the public unless requested otherwise by the respondent.
- a full transcript of the hearing must be kept for three years of length of commitment.

- the Alabama Rules of Evidence apply.
- the respondent has the right to offer evidence, and to compel witnesses and the right to cross-examine.
- respondent may testify in his own behalf but cannot be forced to testify against himself.
- commitment is granted only if the elements required for commitment are established by clear, unequivocal and convincing evidence.

#### 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. The procedure is required by the federal court decision of Lynch v. Baxley, 386 F.Supp. 378 (M.D. Ala. 1974), rev'd on other grounds 651 F.2d 387 (5th Cir. 1981)

#### WHAT FOLLOWS AN INITIAL COMMITMENT?

- initial commitment order valid for up to 150 days.
- state must file a petition for renewal within 30 days of expiration of initial order, stating in detail reasons for renewal.
- no renewal shall exceed one year.
- respondent must be released if renewal petition is not filed or is denied.
- under the 1986 Consent Decree, the Department of Mental Health has "an affirmative duty to provide adequate transitional treatment and care for all patients released after a period of involuntary confinement. Transitional care and treatment possibilities include, but are not limited to, psychiatric day care, treatment in the home by a visiting therapist, nursing home or extended care, out-patient treatment, and treatment in the psychiatric ward of a general hospital." (Wyatt Standard 34).

#### WHAT ARE SOME ALTERNATIVES TO INVOLUNTARY COMMITMENTS?

- Outpatient treatment; Group therapy; Individual therapy; or Medication
- Inpatient treatment &ndash; weekends;
- Respite bed in a transitional home;
- Group homes;
- Voluntary hospitalization;
- Nursing homes; or
- State homes.

This list of alternatives is not an exhaustive list. These alternatives vary as to the amount of supervision involved and whether that alternative is appropriate will depend upon the specific facts involved. Each of these alternatives is voluntary and requires the approval of the person sought to be committed. \*\*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.