

# JUDGES' QUICK REFERENCE GUIDE

TO THE OHIO LAW ON MENTAL HEALTH COMMITMENT

(Through 2016 Revisions)



*With special thanks to Ohio Supreme Court Justice  
Evelyn Lundberg Stratton (Retired) and Melissa Knopp, Esq.  
for their contributions.*

### Acknowledgment

*We thank Heather Pokrandt, a staff member at Northeast Ohio Medical University (NEOMED) and a law student at the University of Akron, and Erica Matthews, a medical student at NEOMED, for their contributions to this project.*

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to the Ohio Law on  
Mental Health Civil Commitment  
(Through 2016 Revisions)**

A Publication of the  
Treatment Advocacy Center  
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Dear Judges,

We want to share with you our Judge's *Quick-Reference Guide to the Ohio Law on Mental Health Commitment*, mostly covering ORC 5122. This chapter deals with both inpatient and outpatient commitments, and can be very difficult to follow with its many steps and requirements. This Guide is a companion to the *Ohio AOT Implementation Manual – Developing an Effective Assisted Outpatient Treatment Program*.

While the commitment statutes have been on the books for many years, a recent amendment has clarified the use of “court ordered outpatient treatment” (more commonly known as “assisted outpatient treatment” or “AOT”) and made it a more useful tool in dealing with those persons with mental illness who need some extra help following a treatment plan in the community. This Guide covers both types of commitments, as they are interrelated and often require movement from inpatient status to outpatient or vice versa.

Our goal is to present the relevant law in an outline form that is easier to navigate than the code itself. This is not intended to substitute for your consultation of the code in judicial decision-making. To assist your role on deciding what the law means, the statutory citations are included throughout.

We hope you will find this Guide and its companion useful tools in serving Ohioans who need the court's intervention to secure life-saving mental health treatment.

Sincerely,

A handwritten signature in black ink that reads "Evelyn Lundberg Stratton". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Justice Evelyn Lundberg Stratton, Retired



## INITIATION OF PROCEEDING



### **WHERE IS VENUE FOR A COMMITMENT PROCEEDING? § 5122.35**

- Venue may be in any county where the court's jurisdiction has been specifically given.
- If jurisdiction not specifically given, venue shall be the court of the county where the respondent is found.
- If the affidavit is filed in one county while the respondent is hospitalized in another county, either county may serve as venue.
  - Upon request of the court of the county where the affidavit is filed, the court of the county where the hospital is located shall assume jurisdiction.

### **WHO MAY INITIATE A PROCEEDING FOR COMMITMENT? § 5122.11**

- Anyone with reliable information or actual knowledge.

### **HOW IS A COMMITMENT PROCEEDING INITIATED? § 5122.11**

- By the filing of an affidavit.
  - Form provided under § 5122.111
  - Court may require, or parties may choose, the affidavit to be accompanied by either:
    - Certificate of a psychiatrist, or certificates from both a licensed clinical psychologist and a licensed physician, stating that issuer has examined the respondent and is of the opinion that the person is a "mentally ill person subject to court order"; or

- Personal statement by the applicant that the respondent has refused to submit to an exam.

**WHAT MUST THE AFFIDAVIT ALLEGE TO SUPPORT THE ALLEGATION THAT RESPONDENT IS A “MENTALLY ILL PERSON SUBJECT TO COURT ORDER” (HEREAFTER, “MIPSCO”)? § 5122.11**

- That the respondent has a mental illness; § 5122.01(A)
  - Defined as “a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life;” and
- That because of the mental illness, the respondent meets any one of the following criteria: § 5122.01(B)
  - Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
  - Represents a substantial risk of physical harm to others as manifested by evidence of any of the following:
    - Recent homicidal or other violent behavior; or
    - Recent threats that place another in reasonable fear of violent behavior and serious physical harm; or
    - Other present dangerousness;
  - Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that both:
    - Respondent is unable to provide for and is not providing for his/her own basic physical needs because of his/her mental illness; and

- Appropriate provision for those needs cannot be made immediately available in the community.
- Would benefit from treatment for the mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of the respondent or others;
- Would benefit from treatment as manifested by evidence of behavior indicating that the respondent meets all of the following: {NOTE: A respondent alleged to meet only these criteria is eligible only for court-ordered outpatient treatment.}
  - Is unlikely to survive safely in the community without supervision, based on a clinical determination;
  - Has a history of lack of compliance with treatment for mental illness and one of the following applies:
    - ♦ At least 2x within the prior 36 months, the lack of compliance has been a significant factor in necessitating hospitalization or receipt of services in a correctional facility, provided that the 36-month period shall be extended by the length of any coinciding period of hospitalization or incarceration; or
    - ♦ Within the prior 48 months, the lack of compliance resulted in serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others, provided that the 48- month period shall be extended by the length of any coinciding period of hospitalization or incarceration.
  - As a result of the mental illness, is unlikely to voluntarily participate in necessary treatment; and

- In view of treatment history and current behavior, is in need of treatment in order to prevent a relapse or deterioration that would be likely to result in substantial risk of serious harm to self or others.

**WHAT IS THE COURT'S OBLIGATION TO MAINTAIN CONFIDENTIALITY OF FILINGS/RECORDS? § 5122.31**

- GENERAL RULE: All certificates, applications, records, and reports, other than court journal entries or court docket entries, and directly or indirectly identifying a patient or former patient or person whose hospitalization or commitment has been sought under this chapter, shall be kept confidential. For exceptions, see § 5122.31(A).



## PRE-HEARING PROCEDURES



## **WHAT MUST THE COURT DO UPON RECEIVING A SUFFICIENT APPLICATION FOR COMMITMENT? § 5122.11**

- Court determines whether there is probable cause to believe that respondent is a MIPSCO. (See “Initiation of Proceeding” for criteria.)
- Upon finding probable cause, court must either:
  - Allow the respondent to remain in community and set a date for a full hearing; or
  - Issue a temporary order of detention:
    - Either directly to licensed hospital or up to 48 hours, pending removal to a hospital, to a licensed rest or nursing home, unlicensed hospital, community mental health service provider, or a county home. § 5122.17
    - Temporary detention may not be maintained in a penal setting unless the court finds no less restrictive alternative is available. § 5122.17
    - A hospital MUST receive a temporary detainee. § 5122.05(A)(1)
    - Respondent may be observed and treated until initial hearing (§ 5122.141) or full hearing (§5122.15).
- Court retains jurisdiction in either case.

## **WHO MUST RECEIVE NOTICE OF THE SCHEDULED HEARING? § 5122.12**

- The court shall give notice to all of the following:
  - Affiant;
  - Any one person designated by the respondent;
  - Respondent's counsel;

- Director, Chief Clinical Officer (hereafter, “CCO”), or the respective designee of the hospital, board, community mental health services provider, or facility to which the respondent has been committed; and
- ADAMH Board serving the respondent’s county of residence, or a Board-designated services provider.
- If addresses are known to the court or can be obtained through exercise of reasonable diligence, the court shall give notice to all of the following:
  - Respondent;
  - Respondent’s legal guardian, if any;
  - Respondent’s spouse, if any;
  - Respondent’s parents, if the respondent is a minor and;
  - Respondent’s next of kin, if the respondent has not exercised his/her right to designate a person to receive notice. (See above.)
- Anyone other than the respondent may waive the requirement of notice.

#### **ARE THERE LIMITATIONS ON MODE OF SERVICE? § 5122.12**

- Must be written, served by mail or otherwise.

#### **WHAT ARE THE POST-AFFIDAVIT REQUIREMENTS?**

- Investigation § 5122.13
  - Within 2 business days, if investigative screening not already done, court shall refer the affidavit for investigation to the ADAMH Board or a community mental health provider designated by the board.

- Investigator shall make findings as to both:
  - Whether the respondent is a MIPSCO; and
  - If respondent found to be a MIPSCO, the least restrictive appropriate placement.
- Court may direct the investigator to present the report in:
  - Writing;
  - Open court; or
  - Chambers.
- Court shall make a full record of report.
- Court shall release a copy of the report to counsel.
- Report is not admissible as evidence that respondent is a MIPSCO.
- The investigation shall not preclude the court from issuing a temporary order of detention.
- Pre-hearing medical exam § 5122.14
  - Immediately after receiving the affidavit, court may appoint to examine the respondent either:
    - Psychiatrist; or
    - Both a licensed clinical psychologist and a licensed physician.
  - The exam shall be conducted at:
    - Hospital or other medical facility;
    - Respondent's home; or
    - Other suitable place least likely to harm the respondent's health;
  - The exam report shall state:
    - Mental condition of respondent; and
    - Respondent's need for custody, care or treatment in a mental hospital.
  - Court shall release a copy of the report to counsel.
  - Report is admissible as evidence that respondent is a MIPSCO.









## **WHO RECEIVES AN INITIAL HEARING?**

- Respondents subject to either:
  - Temporary detention under § 5122.11 or § 5122.17; or
  - Emergency hospitalization under § 5122.10.

## **WHEN IS THE INITIAL HEARING HELD? § 5122.141**

- No later than 5 days after the respondent is detained or the affidavit is filed, whichever occurs first.
  - May be continued for up to 5 additional days for good cause shown upon motion of:
    - Respondent or respondent's counsel;
    - CCO; or
    - The court.
- Whenever possible, the initial hearing shall be held before respondent is taken into custody.
- Failure to hold initial hearing within required time frame shall result in immediate discharge of respondent.
- Respondent or respondent's counsel may waive the right to an initial hearing, but full hearing must take place within 30 days of the original involuntary detention or respondent must be discharged.

## **WHERE IS THE INITIAL HEARING HELD? § 5122.141**

- In a physical setting not likely to have a harmful effect on the respondent.
- May be conducted at a hospital outside of the county, with no loss of home court's jurisdiction.

**WHAT MUST BE DETERMINED AT THE INITIAL HEARING? § 5122.141**

- Court must determine whether respondent is a MIPSCO. (See “Initiation of Proceeding” for criteria.)

**WHAT IS THE EFFECT OF THE INITIAL HEARING DETERMINATION? § 5122.141**

- If court finds that respondent is a MIPSCO, it may issue an interim order of detention (continuing detention until the full hearing).
- If court finds that respondent is not a MIPSCO, the respondent shall be immediately discharged and all record of proceeding shall be expunged.

**UNDER WHAT CIRCUMSTANCES IS THE RECORD EXPUNGED AT THE INITIAL HEARING STAGE? § 5122.141**

- Record of the proceeding shall be expunged if BOTH:
  - Respondent is discharged because the initial hearing is not held within the required time; and
  - Proceedings are not reinstituted within 30 days of the discharge.





**AT THE FULL HEARING, WHO PRESENTS THE CASE IN FAVOR OF COMMITMENT? § 5122.15(A)(10)**

- An attorney designated by the ADAMH Board.

**WHO REPRESENTS THE RESPONDENT? § 5122.15(A)(4)**

- Counsel and independent medical expert of respondent's choosing, if respondent is capable of so choosing. § 5122.15(A)(2),(4)
- Court shall appoint counsel if the respondent: § 5122.15(A)(3),(4)
  - Is not represented;
  - Is absent from hearing; or
  - Has not validly waived right to counsel
- If respondent is indigent, court shall both: § 5122.15(A)(4)
  - Appoint an independent medical expert; and
  - Pay for appointed counsel and independent medical expert.

**WHAT EVIDENCE SHALL BE MADE AVAILABLE TO RESPONDENT'S COUNSEL? § 5122.15(A)(1)**

- With consent of respondent, all relevant docs, info and evidence in the custody or control of:
  - State or prosecutor;
  - Hospital in which the respondent currently is held or has previously been committed; and
  - Any other hospital, facility, or person.

## **WHAT MATTERS MUST THE COURT ADDRESS PRIOR TO COMMENCING THE FULL HEARING?**

- Court may conduct hearing in or out of county in which the respondent is held. § 5122.15(A)
- Court shall appoint counsel as required. (See above) § 5122.15(A)(3),(4)
- If respondent is absent from the full hearing, the court shall continue the case if it determines that the respondent's absence is not justified. § 5122.15(A)(3)
- Hearing shall be closed to public unless the respondent requests otherwise through counsel. § 5122.15(A)(5)
- If the hearing is closed to the public, the court, for good cause shown, may admit a person with a legitimate interest in the proceedings. If parties object, the court shall hold a hearing on the issue. § 5122.15(A)(6)
- Court may order a continuance on its own motion, or on motion of respondent or respondent's counsel for good cause shown. § 5122.15(A)(13).

## **WHAT ARE THE COURT'S RESPONSIBILITIES AT THE FULL HEARING?**

- Court shall receive only reliable, competent and material evidence. § 5122.15(A)(9)
- Court shall examine the sufficiency of all documents filed, inform respondent and counsel of the nature and content of the documents and the reasons that commitment is being sought. § 5122.15(A)(8)
- Court shall order a transcript if the respondent is not represented or upon request of respondent's counsel. § 5122.15(A)(14)
  - If respondent is indigent, transcript shall be paid for by the court.

## **WHAT EVIDENCE MUST OR MAY BE PRESENTED AT THE HEARING?**

- ADAMH Board's counsel shall present evidence that the respondent is a MIPSCO. (See "Initiation of Proceeding" for criteria) § 5122.15(A)(10)
  - ADAMH Board's counsel shall offer evidence of diagnosis, prognosis, record of treatment, if any, and less restrictive treatment plans, if any. (A)(10).
- Either party may subpoena the affiant. § 5122.15(A)(7)
- Respondent or respondent's counsel may subpoena witnesses or docs. § 5122.15(A)(11)
- Court shall advise that respondent has right but may not be compelled to testify. § 5122.15(A)(12)

## **WHAT IS THE ADAMH BOARD'S BURDEN OF PROOF AT THE FULL HEARING?**

- Case for commitment must be proven by clear and convincing evidence. § 5122.15(B)

## **WHAT MUST THE COURT FIND AT THE FULL HEARING TO ORDER THE INVOLUNTARY COMMITMENT OF THE RESPONDENT?**

- Court shall order commitment if it finds that the respondent is a MIPSCO. (See "Initiation of Proceeding" for criteria.)





## DISPOSITION



## **WHAT HAPPENS IF THE COURT FINDS THE NEED FOR INVOLUNTARY COMMITMENT IS ESTABLISHED?**

- Court shall order the respondent for a period not to exceed 90 days to:  
§ 5122.15(C)
  - State hospital, if the respondent is a minor in the custody of the Department of Youth Services, for whom such Department sought commitment under § 5139.08;
  - Non-public hospital;
  - Veterans' Administration or other federal agency;
    - Requires court's receipt of a certificate from the federal agency showing that facilities are available and that respondent is eligible for care or treatment there. §§ 5122.16, 5905.2
  - ADAMH Board or Board-designated provider;
  - Private care; or
  - Any other suitable facility.
    - A jail or other correctional facility may not be deemed a suitable facility.
- Commitment shall be conditioned upon the court's receipt of consent by the hospital, facility, agency, or person to accept the respondent.  
§ 5122.15(D)
- In determining the appropriate party to commit the respondent to, the court shall consider the respondent's: § 5122.15(E)
  - Diagnosis;
  - Prognosis;
  - Preference;
  - Projected treatment plan; and

- Least restrictive available alternative that is consistent with treatment goals.
- Commitment may be to an outpatient setting. Court's determination that respondent is a MIPSCO is not necessarily a finding that respondent currently requires hospital care.
- Commitment of the respondent to the ADAMH Board or Board-designated provider implies authority for such entity to move the respondent to a less restrictive treatment setting (i.e., from inpatient to outpatient care) as respondent's needs change over period of commitment.

**ARE THERE ANY RESTRICTIONS ON THE TYPE OF COMMITMENT PERMITTED AFTER THE RESPONDENT IS FOUND TO BE A MIPSCO?**

**§ 5122.01(B)(5)(b)**

- Respondent found to be a MIPSCO solely on the basis of § 5122.01(B)(5)(a) may only be ordered to receive treatment in an outpatient setting.

**WHAT HAPPENS IF THE COURT FINDS THAT THE NEED FOR INVOLUNTARY COMMITMENT IS NOT ESTABLISHED?**

- Court shall dismiss the proceeding and immediately discharge the respondent. § 5122.15(B)

**IF THE FULL HEARING IS HELD BEFORE A REFEREE OR MAGISTRATE, WHAT HAPPENS IF A PARTY OBJECTS TO THE DECISION? § 5122.15(J)**

- Decision takes effect immediately.

- Either party may file written objection within 14 days.
- Court shall hold a hearing on the objection within 10 days and may take testimony.
- A filed objection shall be considered a motion. It must be specific and state grounds with particularity.
- Court may ratify, rescind or modify the referee or magistrate's decision.

**WHAT IS THE STATUS OF THE COURT'S ORDER? §§ 5122.15(K), 2101.42**

- Any court order of commitment is a final, appealable order.

**WHO PAYS THE REGULAR PROBATE COURT FEES AND EXPENSES INCIDENT TO THE ORDER OF HOSPITALIZATION WHEN RESPONDENT LIVES IN ONE COUNTY AND IS COMMITTED IN ANOTHER? § 5122.36**

- Court of the county of residence is responsible for costs.
  - Committing court sends certified copy of order to the county court of legal residence.
  - Receiving court shall enter and record the commitment order.
  - Certified commitment order is prima facie evidence of the residence of the person.
  - If residence cannot be established by the order in court, the matter of residence shall be referred to DMHAS for investigation and determination.

**WHO APPROVES PAYMENT OF COSTS, FEES AND EXPENSES? § 5122.43**

- Some costs, fees and expenses are set or approved by the court. Others are set by statute or other parties. (Consult § 5122.43(A) for specifics.)
- Court shall waive filing and recording fees if patient is indigent.



## POST-DISPOSITION





## **WHAT IS THE COURT'S OBLIGATION TO NOTIFY OTHERS OF THE DISPOSITION?**

- No later than 7 days after adjudication of commitment, the judge or CCO shall notify the office of the attorney general of such adjudication. § 5122.311
- Immediately upon committing respondent to hospital care, court shall transmit to the CCO of the hospital copies, under official seal, of court papers in the case, including certificates of medical witnesses and the finding in the case. § 5122.41

## **WHO MAY APPLY FOR RE-HEARING? § 5122.25**

- Re-hearing is discretionary, following request of any of the following:
  - Hospital;
  - Patient;
  - ADAMH Board;
  - Provider; or
  - Facility with custody
- If granted, re-hearing may be held in either the county of residence or the county of hospitalization.
- A re-hearing shall be conducted under all requirements of a full hearing under § 5122.15.

## **WHAT HAPPENS IF A COMMITTED INPATIENT WISHES TO CONVERT TO A VOLUNTARY ADMISSION? § 5122.15(G)**

- A committed respondent may apply at any time for admission as a voluntary patient. The granting of such application is at the discretion of the entity to which the respondent is committed.

- Upon admitting the respondent on a voluntary basis, the CCO of the entity to which the respondent is committed shall immediately notify in writing all of the following:
  - The court;
  - Respondent's counsel; and
  - ADAMH Board's counsel.
- Upon receipt of notice, the court shall dismiss the case.
- A patient under a forensic commitment to hospital care (pursuant to a finding that the person is incompetent to stand trial or not guilty by reason of insanity) is not eligible for conversion to voluntary admission until the final termination of the forensic commitment.

**WHAT HAPPENS IF COMMITTED OUTPATIENT WISHES TO CONVERT TO A VOLUNTARY ADMISSION? § 5122.15(H)**

- If the entity to which the respondent is committed finds that respondent has "demonstrated voluntary consent," it shall notify the respondent, respondent's counsel, Board counsel, and the court.
- Such entity must submit to the court a report of findings and recommendations.
- Court may dismiss the proceeding upon review of the facts.

**WHAT HAPPENS DURING THE 90-DAY PERIOD IMMEDIATELY FOLLOWING DISPOSITION? § 5122.15(F)**

- If entity to which respondent is committed determines that respondent's treatment needs could be equally well met in an available and appropriate less restrictive setting, it shall inform the court and either:

- Immediately release respondent from commitment; or
- Maintain the commitment while transferring respondent to the less restrictive setting (i.e. outpatient commitment).
- Court shall either dismiss the case or order treatment in the less restrictive setting.

**WHAT HAPPENS AFTER THE 90-DAY PERIOD IMMEDIATELY FOLLOWING DISPOSITION (OR ANY SUBSEQUENT PERIOD OF CONTINUED COMMITMENT)? § 5122.15(H)**

- At the end of any period of commitment, the court shall dismiss the proceeding unless, at least 10 days before the expiration of the period of commitment, Board counsel files an application for continued commitment.
  - The application for continued commitment shall include a written report, filed 3 days before hearing, stating the respondent's:
    - Diagnosis;
    - Prognosis;
    - Past treatment;
    - A list of alternative treatment settings or plans; and
    - Identification of the treatment setting that is least restrictive consistent with treatment needs.
  - The application and written report shall be provided immediately to respondent's counsel.
- Court may continue the commitment after full hearing, which is mandatory and non-waivable.
- Continued commitment may be for up to two years.

**WHAT HAPPENS IF RESPONDENT UNDER LONG-TERM CONTINUED COMMITMENT SEEKS A REVIEW OF STATUS? § 5122.15(H)**

- After at least 180 days since the last full hearing, respondent is entitled to a new hearing. Application may be made by respondent or respondent's counsel.
- Prior to 180 days since the last full hearing, the court may grant a full hearing upon good cause shown. Application may be made by respondent or respondent's counsel, supported by the affidavit of a psychiatrist or licensed clinical psychologist alleging that respondent is no longer a MIPSCO.
- Notice of a review hearing shall follow all requirements of § 5122.12.
- The court may order continued commitment if it finds by clear and convincing evidence that respondent remains a MIPSCO. (See "Initiation of Proceeding" for criteria.)

**WHAT HAPPENS IF A COMMITTED OUTPATIENT IS FOUND TO REQUIRE A MORE RESTRICTIVE TREATMENT SETTING?**

- Answer is dependent on whether respondent was found to be a MIPSCO under any of § 5122.01(B)(1) through (4), or only under § 5122.01(B)(5).
- If respondent is committed under any of § 5122.01(B)(1) through (4), the Board or Board-designated provider shall do all of the following:  
§ 5122.15(L)
  - Determine that respondent is in immediate need of hospital treatment because he or she represents a substantial risk of harm to self or others if allowed to remain in the outpatient setting;

- Within one day of placing respondent in the hospital, file a motion for transfer or communicate to the court by telephone that the motion has been mailed;
- Ensure that every reasonable and appropriate effort is made to take the respondent to the inpatient setting in the least conspicuous manner possible;
- Immediately notify the Board's counsel and respondent's counsel.
- If an outpatient placement is revoked under the circumstances outlined above, the respondent may request a court hearing. If so requested, the court shall hold a hearing on the motion and make a determination within 5 days of the hospital placement.
- If respondent is committed under § 5122.01(B)(5): {NOTE: While technically the statute allows this procedure for an outpatient committed under any of the available criteria, an ADAMH Board would presumably prefer the procedure outlined above if available. Thus, as a practical matter, this procedure may be considered specific to respondents committed under § 5122.01(B)(5).} § 5122.15(N)
  - The treating authority may submit a report to the court indicating grounds for hospitalization based upon the respondent's:
    - Failure to comply with treatment; or
    - Demonstrated signs of decompensation.
  - Upon receipt of report, court shall promptly schedule a hearing.
  - ADAMH Board shall receive notice of the hearing.
  - Prior to hearing, the Board shall submit an additional report on either:
    - Recommended appropriate alternative treatment; or
    - Release of respondent from the order.
  - Court shall consider all available and appropriate alternative treatments.

- Court may not order criminal sanctions against the respondent for violation of the commitment order.
- Court may not order more restrictive outpatient conditions unless it finds by clear and convincing evidence the respondent represents a substantial risk of physical harm to self or others if allowed to remain in the less restrictive setting.
- Court may not commit the respondent to an inpatient setting unless it finds by clear and convincing evidence that respondent is a MIPSCO as defined in § 5122.01(B)(1) through (4).

**HOW MAY THE ENTITY TO WHICH RESPONDENT IS COMMITTED  
EFFECTUATE A CHANGE OF RESPONDENT'S TREATMENT SETTING? § 5122.20**

- If the change is to an equally restrictive or less restrictive setting, the treating entity may change the setting without notifying the court.
- If the change is to a more restrictive setting, CCO must file with court to amend its order of placement.
  - At patient's request, court shall hold a hearing under all requirements of § 5122.15.
  - Hearing to be held within 10 days of transfer or motion, whichever is earlier.
  - Upon motion of a party or itself, court may continue hearing up to 10 days.
- When a voluntary patient whose medical or psychiatric needs are found by the CCO to warrant a transfer refuses to be transferred, the CCO may file an affidavit for a temporary detention order (i.e., initiate commitment).

## **HOW IS A PATIENT DISCHARGED FROM INVOLUNTARY COMMITMENT?**

**§ 5122.21**

- CCO (or delegate) shall examine each patient's status every 30 days. If a patient found to no longer be a MIPSCO, and is not currently under indictment or conviction, CCO shall discharge the patient.
- Such discharge does not require consent or authorization of the court, but CCO shall immediately notify the court and DMHAS.

## **WHAT HAPPENS IF THE PATIENT DIES DURING THE PERIOD OF COMMITMENT? § 5122.23**

- CCO shall notify one or more of the nearest relatives if known.
- If relatives are not known to the CCO, the CCO shall notify the court.
- If so notified, the court shall notify relatives if known.

## **WHEN DOES A COMMITTED PATIENT HAVE A RIGHT TO A WRIT OF HABEAS CORPUS? § 5122.30**

- Only if the patient both:
  - Alleges that he or she is not currently a MIPSCO; and
  - Establishes that the release procedures of § 5122.15(H) are inadequate or unavailable.





## CRIMINAL PROCEDURES



**WHAT PROCEDURES APPLY TO FINDING A PERSON INCOMPETENT TO STAND TRIAL (IST) OR NOT GUILTY BY REASON OF INSANITY (NGRI)?**

- Consult O.R.S. Chapter 2945

**WHAT PROVISIONS OF CHAPTER 5122 ARE RELEVANT TO INDIVIDUALS INVOLVED IN CRIMINAL MATTERS?**

- Provisions of Chapter 5122 apply to a person found IST or NGRI unless in conflict with Chapter 2945, which takes precedence. § 5122.011
- A person found IST or NGRI may not seek voluntary admission until after final termination of the forensic commitment. § 5122.02(D)
- A CCO who discharges a patient under indictment, sentence, probation or parole must give 10 days written notice to the court having criminal jurisdiction over the patient. § 5122.21(A)

**WHAT HAPPENS IF A PERSON UNDER PROBATION OR PAROLE IS DETAINED FOR EMERGENCY HOSPITALIZATION UNDER § 5122.10?**

- If CCO determines person is a MIPSCO, CCO shall follow usual procedures of Chapter 5122.
- If CCO determines person is not a MIPSCO, CCO shall discharge and release the person back to the custody of the Department of Rehabilitation and Correction.





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