

MENTAL RETARDATION COMMITMENT PROCEDURES

Background: In 1976, a federal court in *Goldy v. Beal* ruled that the commitment procedures of the Mental Health and Mental Retardation Act of 1966, 50 Pa. Cons. Stat. Ann. § 4406, were unconstitutionally vague. To correct this problem, DPW promulgated regulations, 55 Pa. Code Ch. 6250, outlining the standards to be used for commitments of persons with mental retardation. Mental Retardation Bulletin No. 99-81-51 (Dec. 1, 1981) and case law provide further guidance on commitment procedures. This fact sheet briefly addresses the procedures and standards that apply to commitments of adults with mental retardation.

What criteria must be met for a court to commit an adult with mental retardation to a state-operated mental retardation institution?

The court must determine based on clear and convincing evidence that a person with mental retardation meets all of the following criteria:

- (1) He is impaired in adaptive behavior to a significant degree and is functioning at an intellectual level two standard deviation measurements below the norm based on acceptable psychological testing techniques.
- (2) The impairment and resultant disability were manifested before the person's 18th birthday and are likely to continue indefinitely.
- (3) The person, because of his mental retardation, presents a substantial risk of physical injury to himself or physical debilitation as demonstrated by behavior within thirty (30) days prior to the petition. The behavior shows that he is unable to provide for, and is not providing for, his most basic need for nourishment, personal and medical care, shelter, self-protection and safety and that provision for his needs is not available and cannot be developed or provided in his own home or in his own community without residential placement.

What procedures must be followed for court-ordered commitments?

Generally, the county MH/MR administrator will file the petition, though family members or "responsible" persons may do so as well. If it is the county MH/MR administrator that files the petition, he should notify all interested and applicable parties of the intent to file a petition at least thirty (30) days before doing so and provide a complete summary of the case record and pre-admission evaluation criteria (including complete medical, psychological, social, and program data). After the notice is filed, the institution will interview the client and family along with the case manager. DPW's Regional Commissioner will evaluate the availability of alternatives with the county MH/MR administrator. If, after these procedures, the county MH/MR administrator determines to proceed with a commitment petition, he must provide to DPW's Regional Commissioner and the proposed facility notice at least five (5) days prior to the hearing.

The individual has the right to be represented by counsel and to have counsel

appointed if he cannot afford an attorney. He may also have the right to have the court appoint an independent expert.

The court must conduct an evidentiary hearing. The individual has the right to be present at the hearing, to introduce evidence, and to cross-examine witnesses.

The court must receive reports of two examining physicians who determine that the individual meets the standard for commitment. The court can only order a commitment if there is clear, unequivocal, and convincing evidence that the criteria are satisfied.

What is the length of a court-ordered commitment?

The court should specify the length of time of the commitment and the duration should not exceed one year. At least three months prior to the end of the commitment period, the institution should contact the county MH/MR administrator to ensure that the case manager is actively involved in developing community alternatives. In the absence of a stated length of commitment in the court order, a person should ask for periodic reviews of his need for continued institutionalization.

Can a person be discharged prior to the end of his commitment?

DPW can discharge a person as soon as care and treatment in the facility is no longer necessary without court approval.

Can a person with mental retardation be subject to an emergency commitment?

Yes, but only if all of the following criteria are met: (1) the county MH/MR administrator authorizes it; (2) the Regional Commissioner of Mental Retardation approves it; (3) the proposed facility is willing and able to accept the client; and (4) the "standard of risk" is established because the person, based on overt acts or threats, appears to be dangerous to himself or others and in need of immediate care. An emergency commitment cannot exceed ten (10) days under any circumstances.

Where can I get more information?

For more information about mental retardation commitments, you can contact the intake system of Disability Rights Network of Pennsylvania 800-692-7443 (voice) or 888-375-7139 (TDD).

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