Designated Examiner Certification Training

Office of Substance Use and Mental Health

Civil commitment

Updated 5/23/2024

Utah Department of Health & Human Services

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Utah Department of Health & Human Services

Purpose and Philosophy

Designated Examiner Certification Training

Module 1

Utah Department of Health & Human Services

Why is There a Need for Civil Commitment?

- Citizens have individual civil liberties that need to be protected.
- Process is a benevolent attempt to provide treatment to a vulnerable population. Treatment is not punishment.
- The state may need to deprive someone of their civil liberties because they pose a danger to self or others due to mental illness.
- This is done according to the “due process of law.”

Least Restrictive Environment

The Office of Substance Use and Mental Health (OSUMH) and the Local Mental Health Authority's (LMHA) shared philosophy is to treat the individual in the least restrictive environment possible

Traditional levels of care may include the following:

- Outpatient (including in home services)
- Intensive Outpatient/Day Treatment
- Supported Housing/Respite/Foster Care/Structured Foster Care
- Residential
- Acute Inpatient
- State Hospital

Mandate by law to use least restrictive environment

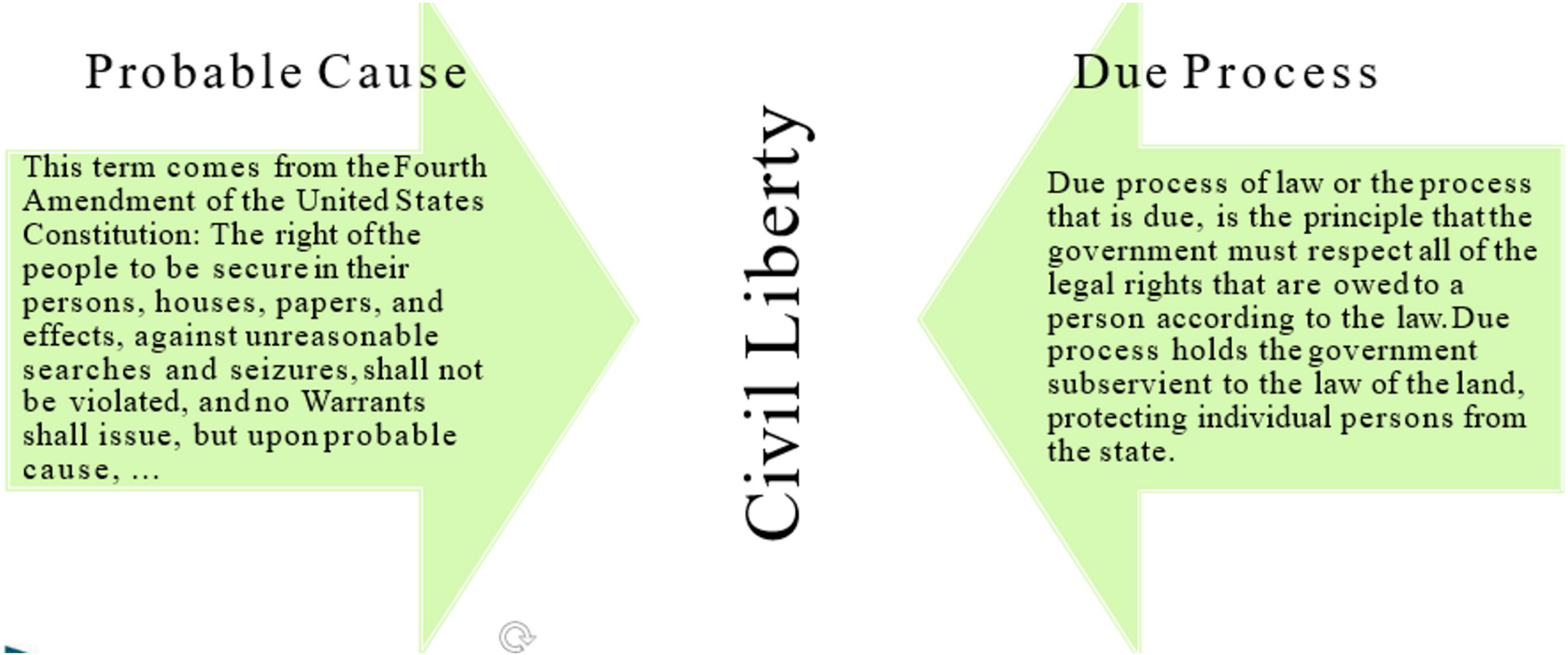
Least Restrictive Environment

- Individuals are usually committed when they pose a danger to themselves or others.
- Commitment is to the Local Mental Health Authority (LMHA)
  - Adults are committed for treatment, not necessarily to a place or facility.
  - Children are committed to the physical custody of the LMHA prior to being placed in a treatment facility.

- Individuals may be transitioned from inpatient to “the least restrictive environment” available which provides safe, adequate and appropriate care.

Powers of the State

- Civil commitment laws in the United States have been justified on the historical foundation of two fundamental powers and responsibilities of government.
- First, governments are responsible for protecting each citizen from injury by another. This power of protection is commonly called **police powers**.
- The second power, known as **parens patriae** (parent of the nation) is based on the government's responsibility to care for a disabled citizen as a loyal parent would care for a child.
- A person with a significant mental illness may be civilly committed, or involuntarily hospitalized, under either of these powers. It is understood that the purpose of civil commitment is for the protection of and safety of the public and/or the person with the mental illness.



The Mitigation of Power

Probable Cause

- Neither the Fourth Amendment nor the federal statutory provisions relevant to the area define "probable cause," the definition is entirely a judicial construct. PROBABLE CAUSE is determined according to:

  "*The factual and practical considerations of everyday life on which reasonable and prudent men act".*

- With respect to Utah civil commitment statutes (26B-5-331), probable cause is the standard under which a peace officer may invoke custody and transportation of a person based on belief formed through observation that the individual is mentally ill and a danger to himself or others.

Due Process of Law

- The Due Process Clause of the Fourteenth Amendment to the United States Constitution, prohibits states from unfairly or arbitrarily depriving individuals of life, liberty, or property.
- Due process limits the powers of government in order to protect the rights of individuals.
- Procedural due process limits the exercise of power by state and federal governments, by requiring that they follow certain procedures in criminal and civil matters, such as proper notice, and the opportunity for a fair and impartial hearing.
- In cases where an individual has claimed a violation of due process rights, the courts must determine whether the individual has been deprived of "life, liberty, or property," and what procedural protections are "due" that individual.
- What process is due, depends upon the facts and circumstances of a particular case.

Commitment Process Overview

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Module 2

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Commitment Process Overview

- Two separate and distinct processes for civil commitment exist in statute and rule, one for adults and one for children.
- Separate criteria, paperwork and procedures exist for the commitment process for adults, and for the commitment of children.
- Distinct and specific roles for Designated Examiners in both the adult and child commitment processes.

Adult Commitment Criteria

- The proposed patient has a mental illness;
- Because of the proposed patients mental illness, the proposed patient poses a substantial danger to self or others;
- The proposed patient lacks the ability to engage in a rational decision- making process regarding the acceptance or rejection of mental health treatment as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment;
- There is no less appropriate least restrictive alternative to a court order of commitment; and
- The local mental health authority can provide the proposed patient with treatment that is adequate and appropriate to the proposed patient's conditions and needs,

or…

Involuntary Commitment Criteria

Adult Commitment Criteria With Criminal Charges

- The proposed patient has been charged with a criminal offense;
- With respect to the charged offense, the proposed patient is found incompetent to proceed as a result of a mental illness,
- The proposed patient has a mental illness,
- The proposed patient has a persistent unawareness of their mental illness and the negative consequences of that illness, or within the preceding six months has been requested or ordered to undergo mental health treatment but has unreasonably refused to undergo that treatment
- There is no less appropriate least restrictive alternative to a court order of commitment; and
- The local mental health authority can provide the proposed patient with treatment that is adequate and appropriate to the proposed patient's conditions and needs.

Involuntary Commitment Criteria

Children Commitment Criteria

- The child has a mental illness;
- The child demonstrates a risk of harm to himself or others;
- The child is experiencing significant impairment in his ability to perform socially;
- There is no appropriate less-restrictive alternative; and
- The child will benefit from care and treatment by the local mental health authority.

Involuntary Commitment Criteria

Statute/Definitions

Designated Examiner Certification Training
Module 3

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Definitions 26B-5-301

- “Designated examiner” means a licensed physician familiar with severe mental illness, preferably a psychiatrist, designated by the division as specially qualified by training or experience in the diagnosis of mental related illness, or

- or another licensed mental health professional designated by the division as specially qualified by training and at least five years’ continual experience in the treatment of mental or related illness.

Utah Administrative Rule R523-7-3(1)

- The Office of Substance Abuse and Mental Health (OSAMH) shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness.

- Upon receipt of a written application, the Director of OSAMH will cause to occur, a review and examination of the applicants qualifications.

Minimum Standards for Certification

The applicant must possess the minimum qualifications:

1. Be a licensed physician or other licensed mental health professional as defined by UCA 58-60-103(1)(b), Mental Health Professional Practice Act;

2. Be a resident of the State of Utah;

3. Other licensed mental health professionals must have 5 years continual experience, post licensure, in the treatment of mental (or related) illness; and

4. Demonstrate a complete and thorough understanding of abnormal psychology abnormal behavior.

Minimum Standards for Certification

The applicant will be tested on this criteria:

- Demonstrate a fundamental working knowledge of mental health law, and in particular, involuntary commitment;
- Be able to discriminate between behavior that meets the criteria for civil commitment from behavior that does not; and
- Demonstrate a general knowledge of the court process and the conduct of civil commitment hearings.

Designated Examiner for Children
(Neutral & Detached Fact Finder)

- In the commitment of a child, the Designated Examiner may also be known as a Neutral & Detached Fact Finder (NDFF) and when acting as such, should not be involved in the child's treatment; and may not profit, financially or otherwise, from the commitment or physical placement of the child in that setting
  62A-15-703 (2) & 62A-15-703 (3)(a) 62A-15-703(3)(b)

Definitions

Local Mental Health Authority:

- A county legislative body – generally the county commission or group of commissions presiding over the counties that serve a public mental health catchment area

- Commitment is to the Local Mental Health Authority

Definitions

Mental Health Officer:

- An individual who is designated by a Local Mental Health Authority as qualified by training and experience in the recognition and identification of mental illness
- A Mental Health Officer may sign an Emergency Application for Involuntary Commitment Without Certification (The Pink Sheet)

Clinical Director or Designee:

- The Clinical Director of the Local Mental Health Authority or a “clinical employee” designated by the Clinical Director

Substantial Danger

“Substantial danger” means that due to mental illness, and individual is at serious risk of:

a. Suicide;
b. serious bodily self-injury;
c. serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, and shelter;
d. causing or attempting to cause serious bodily injury to another individual; or
e. engaging in harmful sexual conduct.
f. if not treated, suffering severe and abnormal mental, emotional, or physical distress that:
    i. is associated with significant impairment in judgement, reason, or behavior, and
    i.i. causes a substantial deterioration of the individual's previous ability to function independently

Substantial Danger- Harmful Sexual Conduct

“Harmful sexual conduct” means any of the following conduct upon an individual without the individual’s consent, or upon an individual who cannot legally consent to the conduct including under the circumstances described in subsections UCA 76-5-406(1) through (12):

(a) sexual intercourse;
(b) penetration, however slight of the genital or anal opening of the individual;
(c) any sexual act involving the genitals or anus of the actor or the individual and the mouth or anus of either individual, regardless of the gender of either participant; or
(d) any sexual act causing substantial emotional injury or bodily pain

Substantial Danger - Timeliness

- The court shall consider all relevant historical and material information which is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah Rules of Evidence, 26B-5-332 (15)(d) however

- When determining if the element of “Substantial Danger” exists, the Designated Examiner (DE) also considers the level of danger, based on behaviors, and/or threats, that have occurred in the relative recent past

Reporting Violence/Sexual Abuse Requirements

- A Designated Examiner is subject to all violence/sexual abuse reporting responsibilities.

Adult Procedure/Paperwork

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Module 4

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How to Proceed

- You receive an inquiry regarding commitment or a crisis contact.
- You gather information and determine the person has a mental illness that is impairing his or her functioning and poses a substantial danger to themselves or others.
- What do you do?
- What are your options?

Procedure for Voluntary Admission

- Health Care is Rendered on the Basis of Informed Consent.
- 18 year old or older, gives informed consent after explanation of recommendations by a mental health professional.
- Patient agrees to abide by the rules and regulations of the treating facility.
- Patient retains right to request their release at any time.
- Release may be denied by the facility for up to 48 hours while staff files Application for Commitment (white sheet)

Application for Voluntary Admission to Local Mental Health Authority
Form 35-1

- Please click on link to see Form 35-1
- One Page Form
- Discussion

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Request for Release From (Voluntary) Admission to Local Mental Health Authority Form 31-1

- Patient requests to be released as a voluntary patient of the Local Mental Health Authority (LMHA).

- Release may be postponed up to 48 hours by completing Form 31-2, Notice of Denial of Request for Release from Local Mental Health Authority.

Request for Release From (Voluntary) Admission to Local Mental health Authority

Please click on the link to see Form 31-1 **FORM 31-1**

- One page Form
- Discussion

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Notice of Denial of Request for Release From Local Mental health Authority Form 31-2

- Voluntary patient requests release
- Staff feel patient meets commitment criteria
- Patient fills out Request For Release Form
- Staff completes Notice of Denial of Request for Release From Local Mental Health Authority
- Release may be denied by the facility for up to 48 hours while staff files Application for Commitment (White Sheet)
- Copy of Form 31-2 given to patient without undue delay
- Is a non-judicial temporary hold

Notice of Denial of Request for Release From Local Mental Health Authority

Please click on the link to see **Form 31-2**

- One page form
- Discussion

Utah Department of Health & Human Services

The Commitment Rainbow

- Denial of Release (voluntary patient)

❑ Pink Sheet

❑ Blue sheet

❑ White Sheet

Emergency Application for Temporary Commitment Without Certification (Pink Sheet)

DOCUMENTATION REQUIRED:

Statement of circumstances must document:

- Facts which called person to attention of officer,
- specific nature of danger, and
- summary of observations upon which statement of danger is based

Be sure to document “facts” not conclusions

Emergency Application for Temporary Commitment Without Certification (Pink Sheet)

- Filled out and signed by a Mental Health Officer or a Police Officer, who "observes behavior (probable cause) which leads to belief that the person is mentally ill and there is a substantial likelihood of serious harm to self or others."
- A Police Officer can detain and transport based on the observations of a Mental Health Officer's report to them.
- Authorizes hold for up to 72 hours excluding weekends and legal holidays.
- If the patient is brought in on a pink sheet initiated by a police officer or mental health officer, the LMHA or its designee will notify the peace officer or mental health officer if the patient is released/cleared from a pink sheet.

Emergency Application for Temporary Commitment Without Certification Form 34-2 (Pink Sheet)

Please click on the link to see Form 34-2

- Two Page Form
- Discussion

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Emergency Application for Temporary Commitment With Certification (Blue Sheet)

Filled out and signed by:

- An applicant
  (responsible citizen with first-hand knowledge of the facts indicating mental illness and risk of injury), and
- A licensed physician, licensed physician assistant licensed nurse practitioner, or designated examiner within 3 days of having examined the patient.
- Authorizes hold for up to 72 hours excluding weekends and legal holidays.

Emergency Application for Temporary Commitment With Certification Form 34-1 (Blue Sheet)

Please click on link to see Form 34-1

- Two Page Form
- Discussion

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Differences in Pink & Blue Sheet Criteria

Pink Sheet

- Completed by Police Officer or Mental Health Officer
- Conduct that leads an officer to conclude that the person has a mental illness
- "...because of that apparent mental illness and conduct, there is a substantial likelihood of serious harm to that person or others"
- Requires a local mental health authority or its designee to notify a peace officer or mental health officer when released/cleared from a pink sheet.

Blue Sheet

- Page One – Completed by Applicant/Observer
- Page Two – Completed by DE, Licensed Physician, Licensed Nurse Practitioner, or Licensed Physician Assistant
- Because of the mental illness, "is likely to injure self or others if not immediately restrained"

Non-Judicial Emergency Admissions

- Pink and Blue sheets get your patient from the outside to the inside of a psychiatric hospital, for further evaluation. Does not guarantee admission to a psychiatric hospital. If upon assessment at ER, the individual meets criteria for admission, then the following apply:
  - The Crisis Worker at the ER will determine placement.
  - If the patient is a known client of LMHA or if the LMHA initiated the hold then the ER will contact the LMHA and tell them where they were placed.

Patient May Be Detained in Any Appropriate Setting

- Commitment statues stipulate that a patient may be detained in any environment that is adequate and appropriate.
- Cannot be detrimental to their clinical needs and condition.

Example: Patient filed on at nursing home, goes to court, gets committed and never comes to hospital.

Four Options at Expiration of Non-Judicial Detention

- Release the patient
- Patient consents to voluntary treatment
- File with District Court (White Sheet)

26B-5-331 Temporary commitment requirements and procedures---Rights.

- A local mental health authority shall provide discharge instructions to each individual committed under this section at or before the time the individual is discharged from the local mental health authority's custody, regardless of whether the individual is discharged by being released, taken into a peace officer’s protective custody, transported to a medical facility or other facility, or other circumstances.

Discharge Instructions 26B-5-331 (8)(b)

(b) Discharge instructions provided under Subsection (8)(a) shall include:
(i) a summary of why the individual was committed to the local mental health authority;
(ii) detailed information about why the individual is being discharged from the local mental health authority's custody;
(iii) a safety plan for the individual based on the individual's mental illness or mental or emotional state;
(iv) notification to the individual's primary care provider, if applicable;
(v) if the individual is discharged without food, housing, or economic security, a referral to appropriate services, if such services exist in the individual’s community;
(vi) the phone number to call or text for a crisis services hotline, and information about the availability of peer support services;

Discharge Instructions 26B-5-331 (8)(b)

(vii) a copy of any psychiatric advance directive presented to the local mental health authority, if applicable;
(viii) information about how to establish a psychiatric advance directive if one was not presented to the local mental health authority;
(ix) as applicable, information about medications that were changed or discontinued during the commitment;
(x) a list of any screening or diagnostic tests conducted during the commitment;
(xi) a summary of therapeutic treatments provided during the commitment;
(xii) any laboratory work, including blood samples or imaging, that was completed or attempted during the commitment; and
(xiii) information about how to contact the local mental health authority if needed.

Discharge Instructions 26B-5-331 (8)(c)(d)(e)(f)

(c) If an individual's medications were changed, or if an individual was prescribed new medications while committed under this section, discharge instructions provided under Subsection (8)(a) shall include a clinically appropriate supply of medications, as determined by a licensed health care provider, to allow the individual time to access another health care provider or follow-up appointment.

(d) If an individual refuses to accept discharge instructions, the local mental health authority shall document the refusal in the individual's medical record.

(e) If an individual's discharge instructions include referrals to services under Subsection 8)(b)(v), the local mental health authority shall document those referrals in the individual's medical record.

(f) The local mental health authority shall attempt to follow up with a discharged individual at least 48 hours after discharge, and may use peer support professionals when performing follow-up care or developing a continuing care plan.

Adult Commitment Criteria

- The proposed patient has a mental illness;
- Because of the proposed patients mental illness, the proposed patient poses a substantial danger to self or others;
- The proposed patient lacks the ability to engage in a rational decision- making process regarding the acceptance or rejection of mental health treatment as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment;
- There is no less appropriate least restrictive alternative to a court order of commitment; and
- The local mental health authority can provide the proposed patient with treatment that is adequate and appropriate to the proposed patient's conditions and needs.

Involuntary Commitment Criteria

Adult Commitment Criteria With Criminal Charges

- The proposed patient has been charged with a criminal offense;
- With respect to the charged offense, the proposed patient is found incompetent to proceed as a result of a mental illness,
- The proposed patient has a mental illness,
- The proposed patient has a persistent unawareness of their mental illness and the negative consequences of that illness, or within the preceding six months has been requested or ordered to undergo metnal health treatment but has unreasonably refused to undergo that treatment
- There is no less appropriate least restrictive alternative to a court order of commitment; and
- The local mental health authority can provide the proposed patient with treatment that is adequate and appropriate to the proposed patient's conditions and needs.

Involuntary Commitment Criteria

Commitment Criteria

CLINICAL/BEHAVIORAL CRITERIA	1	The proposed patient has a mental illness.	A psychiatric disorder as defined by the current edition of the DSM published by the APA which substantially impairs a person's mental,emotional, behavioral, or relatedfunctioning.
	2	Because of the proposed patient's mental illness the proposed patient poses a substantial danger to self or others.	Review Definition of Substantial Danger slide 23
	3	The patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mentaltreatment.	Demonstrated by evidence of inability to weigh the possible risks of accepting orrejecting treatment.
TECHNICAL CRITERIA	4	There is no appropriate less-restrictive alternative to a courtorder of commitment.	This doctrine asserts that the breadth of legislative abridgement must be viewed in light of less drastic means of achieving the same basicpurpose.
	5	The local mental health authority can provide the individual with treatment that is adequate and appropriate to his conditions andneeds.	This is an exclusionary critiera and would likely apply, for example, to substance abuse tx,medical tx for organic conditions, and tx for intellectual disability.

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Application for Order of Involuntary Commitment Form 36-1

(White sheet or Judicial)

This is the standard form used to initiate an involuntary judicial civil commitment proceeding

- An affiant fills out the first page and provides signature according to Unsworn Declaration Act- UCA 78B-18a-106.
- Second page is completed by physician or designated examiner who has examined patient in the last 7 days
- Application is delivered to District Court
- The Court shall require the applicant to consult with the appropriate local mental health authority at or before hearing.
- Court may issue an Order of Detention.

Procedure for Involuntary Commitment
(White Sheet)

- Filed with District Court by affiant, and Physician or Designated Examiner who fills out and signs the 2nd page, after examining patient Within past 7 days, or

- Affiant claims proposed patient has refused to submit to an examination, then
  - Court may issue "Order to Determine Existing Facts and Preliminary Mental Health Report" which Directs mental health staff to conduct an outreach interview and report back to the court.

Application for Order of Involuntary Commitment Form 36-1

Please click on link to see Form 36-1

- Two Page Form
  - Page 1 completed by Affiant
  - Page 2 completed by Physician or Designated Examiner
- Discussion

Utah Department of Health & Human Services

Order to Determine Existing Facts
Form 36-2

Please click on link to see Form 36-2

- Two Page Form
  - Page 1 is issued by the court
  - Page 2 completed by a Mental health Professional or a Designated Examiner from the Local Mental health Authority

- The Court may require this information before issuing an order of detention (Court Form 1st Page)
- Often used in circumstances where the patient has refused to be examined

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Procedures for Involuntary Commitment
(White Sheet)
Form 36-5

- Court issues “Order for Commitment and /or Detention Pending Hearing and/or Examination”.
- Facility may send to Court “Report of Clinical Director or His/Her Designee Upon Admission” rendering a second opinion.
- Court appoints two Designated Examiners within 24 hours of receiving application.
- Court sets date for mental hearing within 10 calendar days of receipt of application.

Order For Commitment and/or Detention Pending Hearing and/or Examination
Form 36-5

Please click on link to see Form 36-5

One Page Form

- Page 1 completed by Affiant
- Approved by District Court Judge
- Discussion

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Report of Local Mental Health Authority/Designee, of Examination Upon Admission
Form 36-8

- Report to District Court completed by DE
- Indicates that DE has examined proposed patient
- Has formed an opinion
- Identifies what the DE’s opinion is

Report of Local Mental Health Authority/Designee, of Examination Upon Admission Form
36-8

Please click on link to see Form 36-8

- One Page Form
- Form completed by Clinical Director/Designee
- Discussion

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Commitment Hearing

- Then, the patient is scheduled for a “Commitment Hearing”
- This occurs within 10 calendar days of being “filed on” by the local mental health authority
- Each court schedules commitment hearings on a specific day of the week
- Each court has a specific deadline to be added to the court calendar
- Examples of various court calendars

Commitment Hearing

- Not the same as “Mental Health Court”
- Patients are provided with legal counsel
- Two mental health designated examiners interview the patient
- “The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient.”
- District Court Judge or Mental Health Commissioner presides

HB94 UCA 26B-5-332 Civil Commitment Examiner Requirements

Adds Doctorate level trained nurse practitioners, specifically a psychiatric mental health nurse practitioner or a psychiatric mental health clinical nurse specialist who:

(A) is nationally certified;

(B) is doctorally trained; and

(C) has at least two years of inpatient mental health experience, regardless of the license the individual held at the time of that experience; to the role that MDs are currently allowed to provide designated examinations for civil commitment hearings as one of two examiners, one of which had to be an MD, now can be either an MD or a qualified APRN in the statute. The 2nd designated examiner may be a master level clinician or higher trained and certified by DHHS as a Designated Examiner.

Notice to Drop Proceedings Prior to a Hearing Form 36-15

It is possible to drop the commitment proceedings prior to the hearing if:

- Patient decides to become voluntary
- Patient no longer meets criteria
- Other less-restrictive treatment alternatives are available and appropriate to need

Notice to Drop Proceedings Prior to a Hearing Form 36-15

Please click on link to see Form 36-15

- One Page Form
- Completed by Local Mental Health Authority
- Discussion

Utah Department of Health & Human Services

Procedure for Involuntary Commitment (White Sheet)

Commitment Hearing:

- All patients entitled to representation by legal counsel
- District Court Judge/Mental Health Commissioner presides
- Persons specified to be present at hearing include the patient, family, affiant, and all others whom the Court is required to send notice to
- Court receives testimony from examiner and others
- Cross examination of witnesses/examiners by counsel
- Evidence is subject to legal rules of evidence

Procedures for Involuntary Commitment (White Sheet)

- Findings and Order of Commitment
  - Matter may be dismissed if criteria is not met
  - If committed, court will specify a period of commitment up to 6 months

- Upon review hearing, court may order commitment for an indeterminate period if so recommended by examiners
  - Patient is still entitled to reviews at 6 month intervals

Option at a review hearing

- Only at a review hearing, an examiner may testify that:
  - Based on well-documented history the patient has demonstrated a consistently recurring pattern of dropping out of treatment, stopping medications and becoming dangerous.

  - It is now recommended that patient be continued on the order, even though he/she is not posing a substantial danger at this time.

At The Commitment Hearing

- Court may “dismiss” the application in which case the patient is free to leave.
- May specify a period of commitment up to 6 months (commonly 30, 60 or 90 days).
- Reviewed at the end of the specified commitment, unless terminated by the Local Mental Health Authority designee, prior to review hearing.

Obligation of Mental Health Authority to Continually Assess Need for Commitment

- Obligation to try to treat patients in the least restrictive environment that is adequate and appropriate to their need.

- When a patient no longer meets criteria, or is no longer benefited by an order of commitment, it may be terminated by filing a Notice of Discharge from Judicial Order.

Notice of Discharge From Judicial Order of Commitment
Form 42

Please click on this link to see Form 42

- One Page Form
- Completed by Local Mental Health Authority designee
- Discussion

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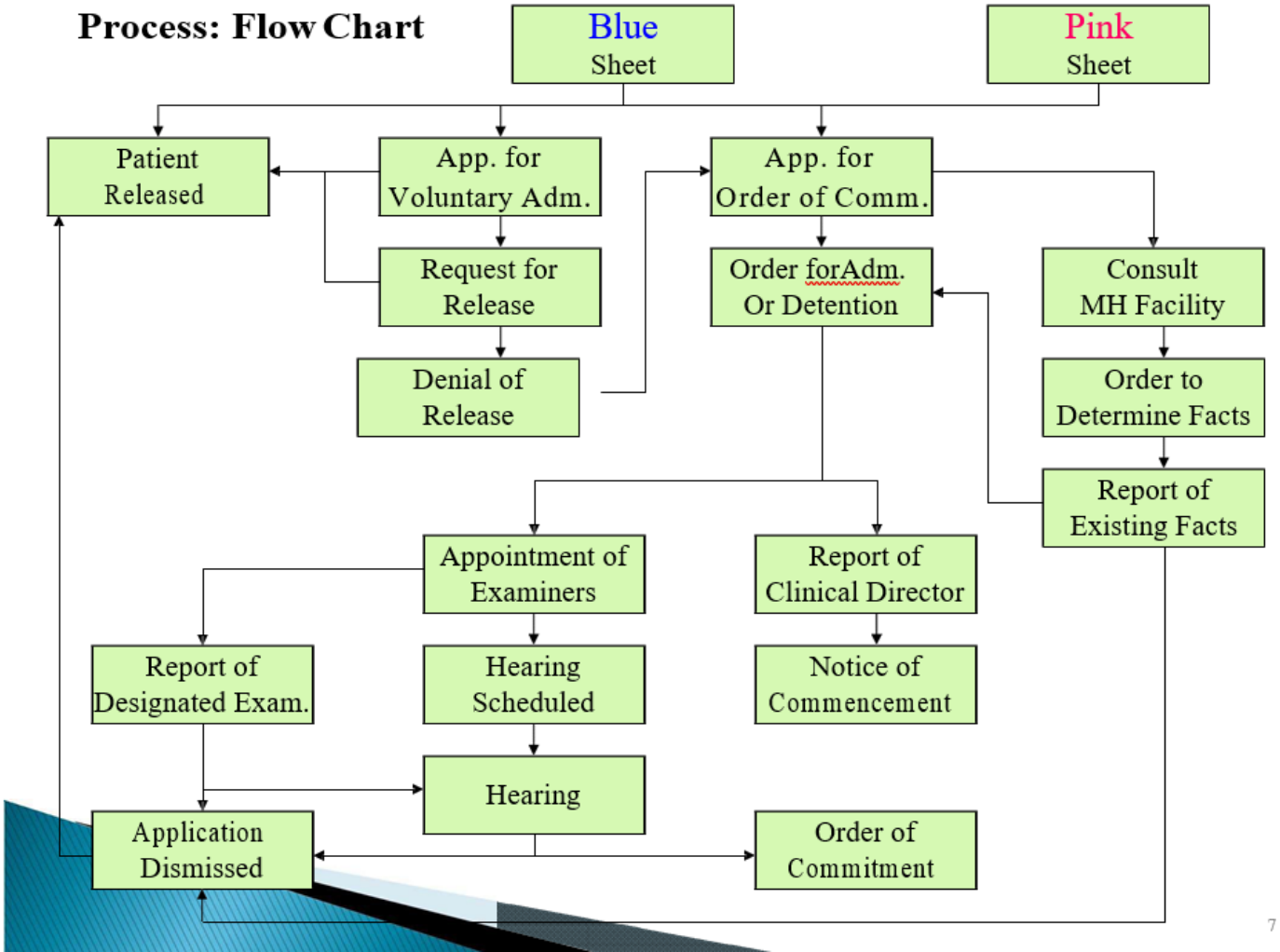
Discharge Instructions UCA 26B-5-332

- A local mental health authority shall provide discharge instructions to each individual
- committed under this section, as outlined in UCA 26B-5-332 (20)(a)(b)(c)(d)(e)(f), at or before the time the individual is discharged from the
- local mental health authority's custody, regardless of whether the individual is discharged
- by being released, taken into peace officer's protective custody, transported to a medical
- facility or other facility, or other circumstances.

Adult Commitment Process: Flow Chart



Least Restrictive Environment

- Commitment is to “treatment” not necessarily to a place or facility.
- People are usually committed while they are inpatient (but not necessarily so).
- They can be released from inpatient to“the least restrictive environment”available which provides adequate and appropriate care.
- Patient signs a “Notice of Conditional Release”that allows patient to be re-hospitalized if not meeting terms of NCR, or the less restrictive environment is aggravating the mental illness.

Notice of Conditional Release

- Must be maintained in the least restrictive environment.
- A “Notice of Conditional Release” is used to transition patient to a less restrictive environment.
- Patient must agree in writing to comply with a contingency plan of treatment.

Notice of Conditional Release
Form 43-1

Please click on the link to see Form 43-1

- One Page Form
- Completed by Local Mental Health Authority designee
- Discussion

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Patient May be Re-hospitalized

ORDER OF PLACEMENT OR RETURN TO A MORE RESTRICTIVE ENVIRONMENT:

- If there is evidence the less restrictive environment is exacerbating the patient's illness
- If the patient fails to comply with the terms of the Conditional Release

If a patient has been discharged from a more restrictive setting for more than 30 days and disagrees with the placement, they may request a court hearing. The request must occur within 30 days of placement into a more restrictive environment

Order of Placement Into a More Restrictive Environment
Form 43-2

Please click on this link to see Form 43-2

- One Page Form
- Form completed by Local Mental Health Authority designee
- Discussion

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Notice of Transfer of Patient

- Statute requires the courts to maintain a list of all patients under commitment.
- At specified intervals that court shall inform the patient and relevant parties of necessity for review hearing.
- In order to do this, the court must be informed of any transfers of care and the location at which patient may be contacted.

Notice of Transfer of Patient
Form 41

Please click on this link to see Form 41

- One Page Form
- Form completed by Local Mental Health Authority designee
- Discussion

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Notice of Continuation of Indeterminate Commitment

When LMHA intends to continue the order of commitment, the LMHA completes the Notice of Continuation of Indeterminate Commitment, Form 36-14.

Patients on indeterminate commitment status are entitled to request a review hearing at 6 month intervals and should be notified of that right each time Form 36-14 is completed, to continue the order of commitment.

If the LMHA determines the conditions no longer justify the order of commitment, the LMHA completes the Notice of Discharge from Judicial Order of Commitment, Form 42 and is signed by the Director or designee.

Notice of Continuation of Indeterminate Commitment
Form 36-14

Please click on the link to see Form 36-14

- One Page Form 36-14
- Form completed by Local Mental Health Authority designee
- Discussion

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Additional Statutory Requirements

- The examiner who signs the Application for Commitment cannot serve as examiner in the hearing for that patient.

- One of the two examiners in the hearing must be a physician.

- The patient's legal counsel has the right to approve or appoint one of the two examiners if they so choose.

- Duty to inform patient at time of examination that information gathered will be presented in hearing.

  (Discuss right and wrong way to approach patient—not like a Miranda warning)

Assisted Outpatient Treatment

Designated Examiner Certification Training

Utah Department of Health & Human Services

Court Ordered AOT

AOT Is a court-ordered process for mental health outpatient treatment

Criteria for Court - Ordered AOT

1. The proposed patient has a mental illness;

2. There is no appropriate less-restrictive alternative to a court order for assisted outpatient treatment; and

3. The proposed patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental health treatment, as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment; or

4. The proposed patient needs assisted outpatient treatment in order to prevent relapse or deterioration that is likely to result in the proposed patient posing a substantial danger to self or others.

Early Intervention

Court-Ordered AOT is involuntary court-ordered outpatient treatment that intervenes before the level of dangerousness is met to prevent further patient deterioration, to move the patient into treatment and hopefully onto a faster recovery.

Difference Between Court-Ordered AOT and Civil Commitment

- The imminent level of substantial danger is not present.
- Requires only the potential for the patient to deteriorate to that level.
- Focuses on history or clinical limitations, rather than current danger.

Who Can Request AOT?

- Director of treating agency, organization, facility or hospital
- Treating licensed mental health professional
- Immediate family members
- Adults residing with the individual
- Peace officer, parole or probation officer supervising the individual

DE Responsibilities

When evaluating a proposed patient for court- ordered AOT treatment, the DE shall consider whether:

- The proposed patient has been under a court order for assisted outpatient treatment;
- The proposed patient complied with the terms of the assisted outpatient treatment order, if any; and
- Assisted outpatient treatment is sufficient to meet the proposed patient's needs.

(UCA 26B-5-339)

Application for Court-Ordered Assisted Outpatient Treatment (Form 39-1)

Please click on link here: Form 39-1

- Two Pages
- Discussion

Utah Department of Health & Human Services

Initial Findings and Order of Assisted Outpatient Treatment (Form 39-10)

Please click on link here: Form 39-10

- One Page
- Discussion

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Notice of Discharge From Order for Assisted Outpatient Treatment (Form 42)

Please click on link here: Form 42

- One Page
- Discussion

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Review Hearings

Court-ordered AOT has the same six-month review hearing requirement as civil commitment.

Services Provided for AOT

The Local Mental Health Authority (or its designee) must provide services including:

1. Case management services

2. Individualized-treatment plan developed in collaboration with the proposed patient, when possible

3. Other treatment and recovery services as described on the treatment plan

Assisted Outpatient Treatment for Mental Illness

Law states that “A health insurance provider may not deny an insured the benefits of the insured’s policy solely because the health care that the insured receives is provided under a court order for assisted outpatient treatment.” UCA 26B-5-351

Law states that “A court order for assisted outpatient treatment does not create independent authority to forcibly medicate a patient. UCA 26B-5-350

Children's Procedure/Paperwork

Designated Examiner Certification Training
Module 5

Utah Department of Health & Human Services

Child/Minor Defined

- Child means a person under 18 years of age.
  UCA 26B-5-401(1)

- In Juvenile Court, an individual can still be considered a Minor through age 21
  If a Minor over the age of 18, is in State's custody and in need of the commitment process, the adult process would be used

Civil Commitment: Which Children?

A child is entitled to due process proceeding whenever they:

1. May receive or receives services through the public mental health system: and
2. Are placed, by a local mental health authority or its designee, in a physical setting where his liberty interests are restricted, including residential and inpatient placements. UCA 26B-5-402
   - Medicaid
   - Uninsured (if the Local Mental Health Authority is financially responsible)
   - In state's custody (DHHS, DCFS, DJJS).

Involuntary Commitment Criteria (LMHA or Designee Admissions Only

The following circumstances clearly exist:

1. The child has a mental illness; and
2. The child demonstrates a risk of harm to himself or others; and
3. The child is experiencing significant impairment in his ability to perform socially; and
4. The child will benefit from care and treatment by the local mental health authority; and
5. There is no appropriate less restrictive alternative.

UCA 26B-5-403 (4)

Commitment Process
(Neutral & Detached Fact Finders

- In the commitment process for children, the Designated Examiner has a dual role, serving both as a Neutral and Detached Fact Finder (NDFF) and in the role of a Judge.

- For children, the commitment process is informal and it is not a court proceeding, but it should not become so informal that statute is not followed or rights are not protected.

Commitment Process

Prior to a Local Mental Health Authority placing a child in residential or inpatient levels of care, physical custody must be transferred to the Local Mental Health Authority by either:

- an Emergency Application for Commitment (Pink or Blue Sheet)
- or a Civil Commitment Proceeding DE (NDFF)

UCA 26B-5-403 (1) & (6)

Commitment Process & Physical Custody

- When a child is committed to the Local Mental Health Authority (LMHA), physical custody of the child is transferred to the LMHA UCA 26B-5-403(1).
- Custody is transferred for the purpose of placement in residential/inpatient levels of care.
- LMHA rights & responsibilities when given physical custody UCA 26B-5-401 (4)
    - Placement of a child in any residential or inpatient setting;
    - The right to physical custody of a child;
    - The right and duty to protect the child;and
    - The duty to provide, or insure that the child is provided with adequate food, clothing, shelter, and ordinary medical care.

Levels of Custody

- There are significant differences between how statutes for various state agencies describe levels of custody for children.
- The Office of Substance Use & Mental Health statute refers to “Physical” and “Legal Custody.”
- Juvenile Court (DHHS/DCFS/DJJS) refers to “Legal Custody” and “Guardianship.”
- “Legal Custody” means something different if a child is in parental custody vs. in state’s custody.

Who Has What Kind of Custody?

Custody	Parental	DHS/DCFS/DJJS
Consent to Routine Therapy	**Physical Custody**	**Legal Custody**
The Commitment to Proceeding transfers physical custody to the Local Mental Health Authority		
Consent to Inpatient Hospitalization & Anti-psychotic medication	**Legal Custody**	**Guardianship**

Who Has Custody of the Child? Why it Matters?

- The person/agency with the “Physical/Legal Custody” only (Physical/Legal) of a child, may consent to routine therapy, but does not have the ability to consent to inpatient hospitalization or the administration of antipsychotic medication.

- The person with the “Legal Custody/Guardianship” of a child may consent to inpatient hospitalization and/or the administration of antipsychotic medication. This person must sign the admission paperwork.

Emergency Exception

- When the child is in DHHS Legal Custody (DHHS, DCFS, DJJS).

- This means that a child's worker from one of these agencies may consent to inpatient psychiatric hospitalization during an emergency.

Emergency Application for Commitment (With or Without Certification)

Similar to adults, with exceptions:

- The time restriction on the Pink or Blue Sheet is 72 hours (maximum) excluding Saturdays, Sundays, and legal holidays.

- The Forms Are Different for Children
  - ❖ Emergency Application for Commitment of Child Without Certification (The Pink Sheet, 2 pages) Please click on link here: Form 0029

  - ❖ Emergency Application for Commitment of Child With Certification (The Blue Sheet, 2 pages) Please click on link here: Form 0031

Utah Department of Health & Human Services

Commitment Proceeding
(Petition for Commitment)

- A child is entitled to due process proceeding.
- The commitment proceeding shall be initiated by a Petition for Commitment.
- A Petition for Commitment can be filled out by anyone who has first-hand knowledge of the child demonstrating a risk of harm to themselves or others and who suspects that the child has a mental illness.
- A copy of the petition should be given to the Local Mental Health Authority, or its designee, who will then provide a copy to the DE acting as the NDFF.
- The Petition for Commitment should not be filled out by the same person who is conducting the Commitment Proceeding DE (NDFF).

Petition for Commitment of Physical Custody of Child to the Local Mental Health Authority (Form 0001)

Used to initiate Civil Commitment Proceedings

- Please click on link here: Form 0001
- One Page Form
- Discussion

Utah Department of Health & Human Services

Commitment Proceeding

(Notice of Commitment Proceeding)

- Notice of the Commitment Proceeding should be given to the following parties prior to the proceeding:
  - The child
  - The child's parent/guardian
  - The person who submitted the Petition for Commitment
  - A representative of the Local Mental Health Authority
  - Any other person the DE acting as the NDFF chooses to receive testimony from
- The parties noted above should be afforded an opportunity to appear and to address the Petition for Commitment UCA 26B-15-403 (5)(b)

Commitment Proceeding

(Notice of Commitment Proceeding)

- If only one parent is present or is being provided with notice, clarify the legal custodial arrangement.
- Whenever application for commitment is made by a person other than the child's parent or guardian, the LMHA shall notify the child's parent(s) or guardian.
- The parent(s) shall be provided sufficient time to prepare and appear at any scheduled proceeding.
- If notice is given by phone, document on form.

Notice of Proceeding of Child or Commitment of Physical Custody to the Local Mental Health Authority (Form 0003)

Notice to child and appropriate others that an application has been filed and a hearing has been set

- Please Click on link here: Form 0003
- One Page Form
- Discussion

Utah Department of Health & Human Services

Commitment Proceeding

The commitment proceeding shall be:

A careful, diagnostic inquiry UCA 26B-15-403 (2)

- Conducted by a Designated Examiner acting as a Neutral & Detached Fact Finder (NDFF) UCA 26B-15-403 (2)
- Conducted in as informal a manner as possible UCA 26B-15-403 (5)(a)
- Conducted in a physical setting that is not likely to have a harmful effect on the child UCA 26B-15-403 (5)(a)

Commitment Proceeding

Documents to be Provided to the DE (NDFF) at the Commitment Proceeding UCA 26B-15-703 (5)(e):

- The Petition for Commitment
- The admission notes
- The child's diagnosis
- Physicians' orders
- Progress notes
- Nursing notes
- Medication records
- Other pertinent documents

Commitment Proceeding
(Child Participation)

The DE (NDFF) may allow the child to waive his right to be present at the commitment proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made a matter of record at the proceeding UCA 26B-15.403 (5)(d)

Commitment Proceeding
(Outcome)

When a decision for commitment is made, the DE (NDFF) shall:

- Inform the child and his parent or legal guardian of the decision, and of the reasons for the decision.
- State in writing the basis of the decision, with specific reference to each of the criteria.
- State the duration of the commitment - which may not exceed 180 days.
- Inform the child and his parent or legal guardian of their right to appeal.

Commitment Proceeding (Outcome)

A copy of the Commitment Proceeding Form should be provided to:

- Child if appropriate (depending on age)
- Parent(s) or legal guardian/custodian
- Residential or Inpatient Facility
- Local Mental Health Authority
- LMHA has the responsibility to place a copy in the child's chart.

Commitment of Physical Custody of Child to Local Mental Health Authority Proceeding (Form 0005)

DE (NDFF) report of commitment proceeding

- Please click on the link here: Form 0005
- Two Page Form
- Discussion

Utah Department of Health & Human Services

Additional Due Process Proceedings

- Even though a child has been committed to the physical custody of the LMHA, the child is still entitled to additional due process proceedings before any treatment which may affect a constitutionally protected liberty or privacy interest is administered UCA 26B-5-403 (14)

- Those treatments include but are not limited to:
  - Antipsychotic medication
  - Electroshock therapy
  - Psychosurgery

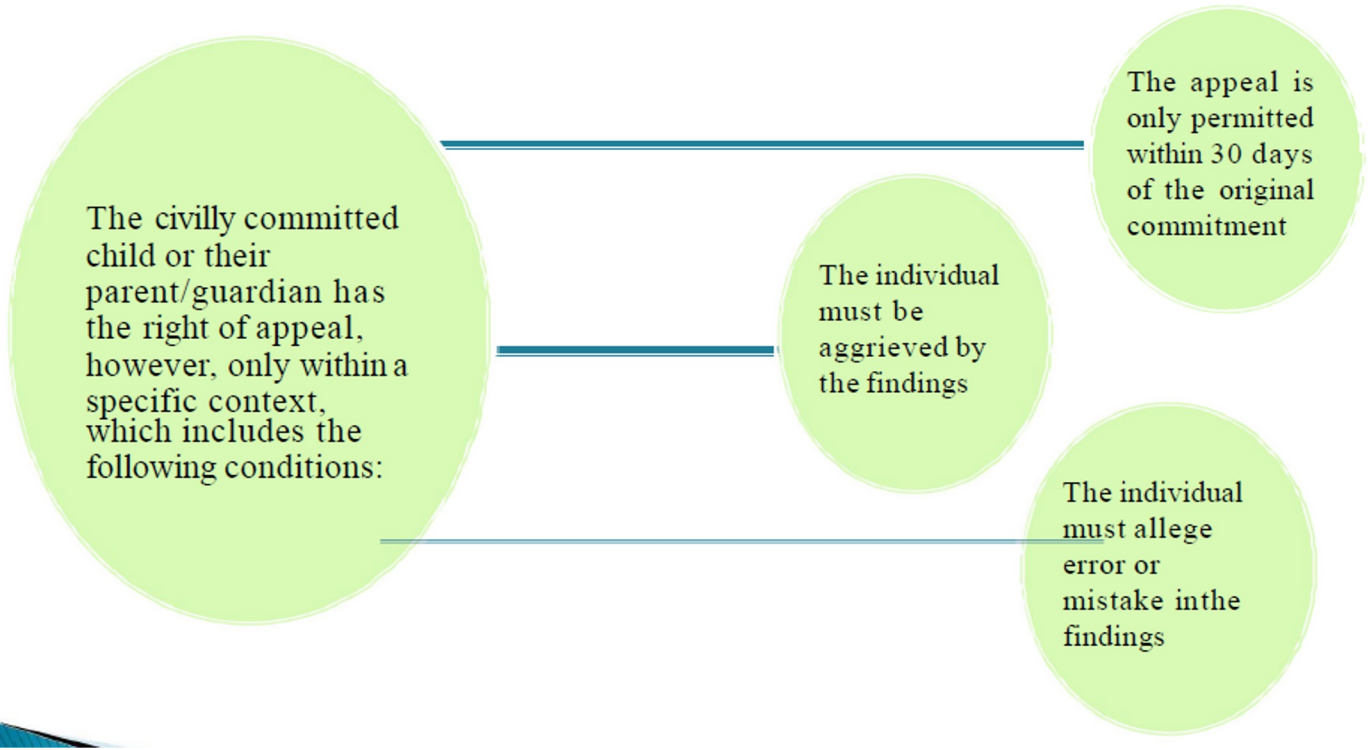
With regard to antipsychotic medications, if either the parent or child disagrees with that treatment, a due process proceeding shall be held UCA 26B-5-404(3)

Right to Appeal

- A child, parent or legal guardian may appeal a commitment order to the Juvenile Court UCA 26B-5-403 (10)(a)

- The Juvenile Court may uphold or dismiss the commitment of a child, upon appeal of the original commitment proceeding

Right To Appeal



Discharging Against Medical Advice

If the parent/guardian with legal custody or the state agency with guardianship of a child chooses to remove a child from a residential or inpatient setting against medical advice (AMA), the LMHA is encouraged to meet with the parent/guardian, attempt to understand their concerns, and explain the possible consequences if the child is removed AMA. If the parent/guardian still wishes to proceed then the LMHA should:

- Complete a Discharge From Commitment to the LMHA of a Child Form
- Document the discussion and invite the parents/guardians to sign
- Provide the parent/guardian with a list of resources such as crisis line number, location of nearest hospital in area, and inform them that they can take the child there if needed.

Notice of Discharge From Commitment to the Local Mental Health Authority of a Child (Form 0067)

LMHA uses form to discharge a child from commitment

- Please click on the link here: Form 0067
- One Page Form
- Discussion

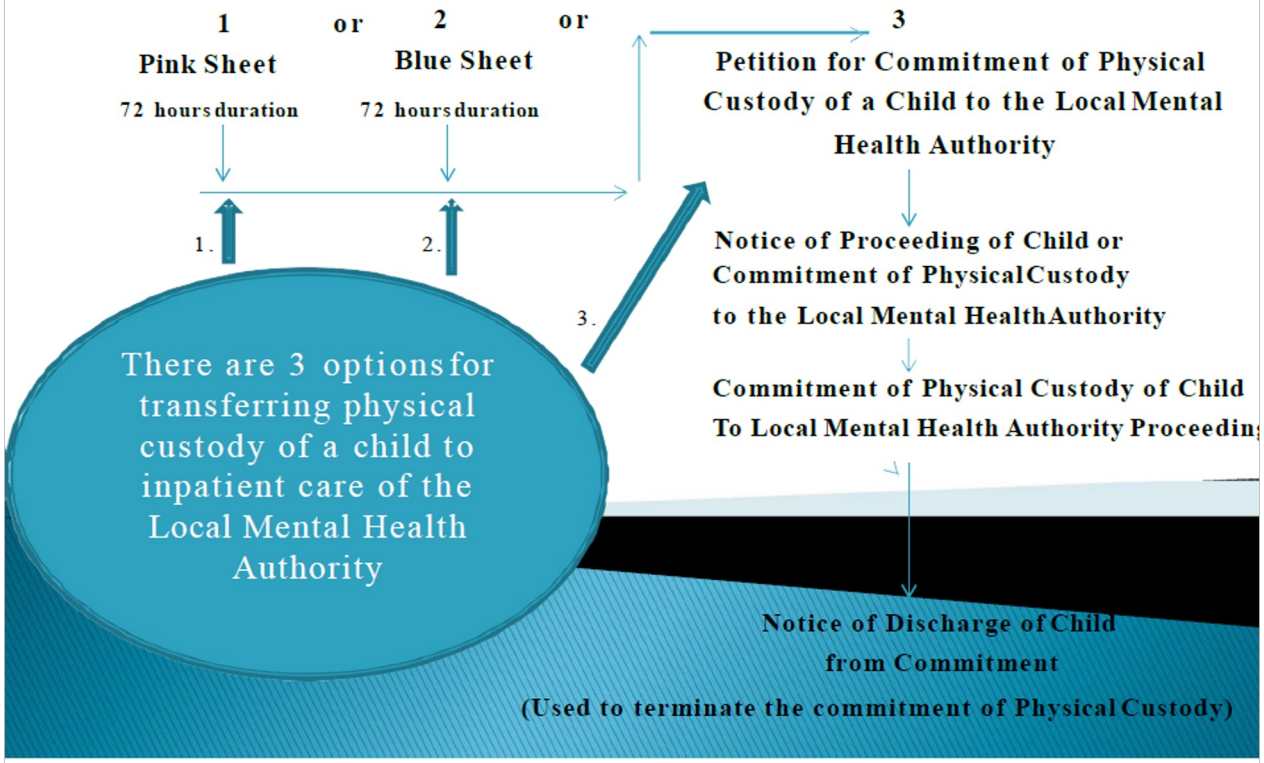
Utah Department of Health & Human Services

Discharging from Commitment

- When a child under commitment is to be released from a residential or inpatient setting, the LMHA needs to discharge the child from commitment
- This is done by completing Form 0067 (Notice of Discharge from Commitment of Child to Local Mental Health Authority)
- Since commitment is for physical custody, the LMHA needs to relinquish these duties and responsibilities :
    - Placement of a child in any residential or inpatient setting;
    - The right to physical custody of a child;
    - The right and duty to protect the child;and
    - The duty to provide, or insure that the child is provided with adequate food, clothing, shelter, and ordinary medical care.

Child Commitment Flow Chart

Methods to transfer physical custody of a minor to care of the Local Mental Health Authority



Case Examples

Designated Examiner Certification Training
Module 6

Utah Department of
Health & Human
Services

Case Example 1 - Child

A child is admitted to an inpatient unit on a Pink or Blue Sheet in cooperation with the parents. It appears the child will be in the inpatient unit longer than 72 hours

- What should you do?
- What additional legal options besides the Pink or Blue sheet should be considered?
- Who should you notify about this?

Case Example 1 -Child

- The commitment proceeding DE (NDFF) process should be initiated before the 72 hours expires
- The best scenario is that the inpatient unit staff has worked with the parents and informed them that they would need to conduct a commitment proceeding, DE (NDFF) since the child is going to be in the inpatient unit longer
- Informal process (could all be done on different days or times based on the time frame before the Pink or Blue expires)
- LMHA assigns a DE (NDFF) and gives the application to the him/her to start the process
- An application for the commitment proceeding process is filled out by the DE (NDFF), with the cooperation of LMHA
- The DE (NDFF) can talk with the parents to make sure they are on board
- DE (NDFF) reads through the chart or documents from the inpatient unit
- DE (NDFF) talks with the child and explains the process
- DE (NDFF) may talk to inpatient unit staff to obtain information
- DE (NDFF) makes a ruling based on the above information

Case Example 2- Adult

- John has been treated at a community mental health outpatient clinic for several years with a diagnosis of schizophrenia.
- After initial problems with medication compliance, John has been fairly stable and his diagnosis has been changed to schizophrenia, residual
- Treatment has been progressing so well in fact, that John is seen only every 8 weeks. During one appointment , the clinician notices that John seems to be more symptomatic than usual.
- As the clinician assesses him, he/she suspects that he has not been medication compliant. You are asked to consult on the case.
- Your interaction with him focuses on his increased symptoms, and towards the end of the meeting, John reveals that he has, in fact, stopped taking his medications.
- John's court commitment was dropped about 12 months ago, as he has been doing so well.

Case Example 2- Adult

- How do you work with this situation to assure proper clinical care?
- How would the situation change, if the court commitment was still in place?
- What would you do if John were resistant to any further suggestions from you?

Case Example 3- Adult

- 85 yr old, white, widowed male, dishonorably discharged veteran. Residing in his own home, in a suburban neighborhood.

- Transported to ER around midnight via EMS and Sheriff deputies, following an incident in which patient allegedly began shooting a firearm at the site of his residence. Alarmed neighbors called 911.

- History upon arrival at Hospital Emergency Room (See attached E.R. notes)

Utah Department of Health & Human Services

Identifying Information:

85 yr old, white, widowed male, dishonorably discharged veteran
Residing in his own home in a suburban neighborhood

History upon arrival at Hospital Emergency Dept.:

Trans to ED around midnight via EMS and Co Sheriff Deputies following an incident in which pt allegedly began shooting a firearm at the site of his residence. Alarmed neighbors called 911.

Sheriff's SWAT team became involved and upon arriving on the scene, evacuated homes in the surrounding area and attempted to develop a means of communication with this citizen. Pt had no telephone in his residence. He was reported to be very hard of hearing by neighbors and so law enforcement officers were unable to commence any vocal interaction with the occupant who was the sole resident of his home. Officers tried to observe inside of citizen's home which did have some lights on. Eventually it appeared that this man was retiring to his bed so SWAT team members entered his residence after deploying a "flash-bang" distraction device and rushed him while he was in bed physically restraining him and containing any potential threat he might pose to them, himself or any public in the area. Deputies had been informed by neighbors that this man was known to possess a number of firearms inside the home. By means of a thorough search they located a rather large number of rifles, shotguns, handguns and even a military mortar. Deputies confiscated all these weapons and removed them from the premises. Patient was brought to ER by EMS with deputies following behind.

A female neighbor initially reported that she was this man's guardian. She said that they had been neighbors for a number of years. She stated that he did not have any living relatives. She said that he owned the home he lived in and was receiving social security retirement income.
She thought he had bank account assets in the neighborhood of $70,000. His collection of firearms was certainly worth many thousand dollars and that several of his weapons were said to be in "mint" or otherwise very good quality condition and that some might be collector's items which would likely increase in value. This neighbor reported that she had a young adult daughter still residing in her home who was preparing to marry soon and that our patient had prepared a will which named her daughter as the person to inherit his home after his death. Upon quizzing the neighbor about the guardianship, there appeared to be significant uncertainty about just what, if any, legal authority she had and how it had been granted. It was also learned that the patient had served in the US military service in his younger days, but had received a dishonorable discharge and was not known to have had any eligibility for Veteran's benefits.

Law enforcement indicated that the only criminal charge which had been filed was a misdemeanor for unlawful discharge of a firearm within city limits. This was not something which would result in the offender being taken into custody, but he would be given a citation and would need to appear in court in the future. Officers were rather insistent that patient should be retained in the hospital on what they were referring to as a "72-hour-hold."

See next p[illegible] the "rest of the story. . ." Suggest that trainees ask what info they want or need to determine the app[illegible]ourse of action. Answers may be supplied from what follows:

Case Example 3- Adult

- Does he have a mental illness?
- What is it?
- Does he meet the 5 criteria for commitment? How do you evaluate?
- What options do you have to effectively deal with this situation?

After considerable time and effort expended in the process of piecing together the relevant history, it was learned that the patient had never experienced any known history of mental illness nor substance abuse. He had been to a local hospital outpatient clinic earlier that same day and had received an in-dwelling urinary catheter for some genital-urinary problem and had been discharged back to his home with scheduled medical follow-up in the future.

As the evening wore on, patient discovered a very slight issue of blood around the catheter entry point and felt he ought to at least call it to the attention of his neighbors whom he looked to in various times of need. They had a mutually agreed upon signal that he would use to signal need for attention from them--that being to flick his front porch lights on and off a few times. The neighbor apparently did not see this at first. So the patient decided, being the old military man and recreational shooter that he was, to use the international distress signal of firing 3 quick shots in succession. He proceeded to get out his .45 caliber long Colt revolver and place some cartridges in the cylinder. Meantime the neighbor lady had notice his porch light on and walked over to investigate. She could see him sitting in his living room loading his revolver and decided to return home to think through her response to himBnot knowing just what might be on his mind or what he might be experiencing. Next thing she heard were the blasts of the revolver.

Her response was to dial 911 and report shots being fired in the neighborhood.

Meantime, the patient went back into his residence to await the neighbor's response to his distress signal. He was able to very rationally recount later, that when no-one responded, he decided that his initial medical concern didn't seem to be anything of great significance so he prepared to retire to bed for the night--completely unaware that a sheriff's SWAT team was assembling outside his home and pondering how to safely manage this potentially volatile situation that they had little information about.

After finally storming the patient's home and subduing him and being hardly able to talk through just what was going on, because the patient was taken completely by surprise and mobilized a mighty but ultimately ineffective effort to defend himself against the onslaught of these unknown assailants who had burst in upon him in his bedroom, the patient was whisked to the hospital emergency department. Deputies insisted that this man needed to be locked up on the psychiatric unit, because what he had done had obviously put an entire suburban neighborhood at risk and he had mightily resisted them in their intervention efforts and he had a large arsenal of weaponry at his home.

Hospital crisis interveners ultimately pieced together all the correct facts about the entire episode and along with the attending MD, concluded that there was no mental illness, no medical condition warranting hospitalization and an understandably upset citizen who demanded to return to his residence. They had most of the foregoing all confirmed by the presumably caring, concerned neighbor lady who had known and tried to be a helper for the patient for many years.

The ultimate course of action was decided by the crisis supervisor who was called at home about 3:00 am for consultation. It was decided to retain patient in the ED until regular day shift at 8:00 am. Further assessment at that time confirmed the conclusion that patient was not actually mentally ill. Patient had largely resolved his initial anger over what had happened to him and had been reassured that his firearms could be returned to him. Referrals were made to Adult Protective Services and County Division of Aging Services to insure that there was advocacy and protection against any possible exploitation and financial manipulation from the allegedly well-intentioned neighbors. Home health services were arranged for the patient. No further mental health contacts have occurred with this case since the original assessment.

Case Example 4- Adult

- A 34-year old Caucasian female, has been referred to you for services about 8 weeks ago
- She is living alone and has no support system to speak of. Her closest family members live in Idaho, and she got divorced about 2 years ago. She presents with a depressive disorder
- Her history reveals that she has been hospitalized once at age 17, due to a suicide attempt.
- You have met with her on a weekly basis for the last 8 weeks. Susan has not made any significant progress, even though she was referred to the psychiatrist and she was started on antidepressants about 6 weeks ago. As you meet her the next time, you notice that she seems more depressed than usual.
- During the conversation, Susan talks about being suicidal. She reports being a 9 on a scale from 1 to 10 (with 10 being the highest). She voices the plan to overdose on medications she has at home.

Case Example 4- Adult

- How do you work with this situation to facilitate proper clinical care?
- How would the situation change if Susan is resistant to any crisis intervention?
- What would you do if Susan got up and left without saying a word when you mention crisis interventions?

Case Example 5- Adult

- You have scheduled some time to catch up on paperwork. (Sounds too good to be true, I know!)
- The secretary calls you and asks you to help with a crisis occurring in the waiting room. As you leave your office,you hear some loud commotion in the waiting room.
- A client is loudly talking to himself about aliens being after him. The secretarial staff informs you that the client became abusive when she attempted to talk to him.
- You also learn that the client thinks he has an appointment to see the physician. As you try to talk to the client, he becomes verbally abusive towards you.

Case Example 5- Adult

- How would you deal with this situation to facilitate proper clinical care?
- What legal options might be available in this case?
- What other information do you need to make a good decision?

Case Example 6 -Adult

- A long-term client diagnosed with schizophrenia, has been on your caseload for about 4 months. He has been in services with the center for most of his adult life, about 15 years. He has been doing well in the community, is able to live independently in an apartment complex.

- You get a phone call from the landlord reporting that neighbors have been complaining about him. Allegedly, he is at home yelling loudly, playing loud music late at night and covering all his windows from the inside with newspapers. Also, the next-door neighbors allege that his apartment is dirty.

- The landlord asks you to “do something” or else he will never work with a client from your center again.

Case Example 6 - Adult

- How would you deal with this situation to facilitate proper clinical care?
- What options should you consider?
- What options do you have if he is currently under court commitment?
- What options do you have if he is not under court commitment?

Case Example 7- Adult

- You receive a phone call from Joan. She has been receiving Case Management services for about 12 months and is doing well.

- Joan states that her 35- year-old sister-in-law, Susan, is in need of treatment as well. Joan reports that Susan is not willing to come in to the center. She reports Susan is “acting weird and talking to herself loudly.”

- Susan’s husband, Jason, is frequently out of town on business and is not aware of the situation, since “Susan is able to hold it together when he is around.” Susan does not have any children.

- Reportedly, Susan is disheveled to some extent, eating poorly, and hearing voices. Joan would like to get Susan into treatment “at any cost, even if it’s involuntary” to help her.

Case Example 7- Adult

- What should you do?
- What legal options are available in this situation?
- How would the situation change, if at all, if Jason (the husband) would agree that Susan needs help?

Case Example 8 - Adult

- Three adult children of a 67-year-old widowed woman contact you. They explain that “mom always has been weird, but lately we are getting really concerned.” They report that their mother has always been reclusive, extremely suspicious of strangers, and reported having “visions of God.”
- The adult children have taken care of their mother and adapted to her peculiarities. For instance, the mother had periods of time where she would not see anybody in person. During those times, the children would leave groceries on the doorstep and watch her take the groceries inside from a distance.
- For about two weeks now, however, the groceries have not been touched. The children are worried about their mother, as they doubt that she is eating properly.

Case Example 8 - Adult

- They also wonder about her deteriorating mental state, as she has made numerous references to “seeing and speaking with God” during their recent (and infrequent) telephone conversations.

- At this time, she is not responding to phone calls (she picks up the phone and hangs up without answering), and won’t answer the door.

- The children drive by frequently and know that their mother is there because the lights are turned on and off during the day and night.

- The adult children of this woman have heard about case management services and feel that “you need to help them out.”

Case Example 8 - Adult

- How would you advise the family?
- What legal options are available?

Courtroom Witness Tips

Designated Examiner Certification Training
Module 7

Utah Department of Health & Human Services

Preparation To Be a Good Court Witness

- Be on time and prepared.
- Be appropriately dressed and groomed.
- Turn off all electronic devices when entering the courtroom, be attentive to the proceedings.
- Think before you speak.
- Review your notes, examination or other relevant documents.

Courtroom Protocol

- Speak up so that your testimony can be easily heard by all present.
- When addressing the Judge, it is proper to use “Your Honor” and when addressing Attorneys you would use their name Mr. or Ms. or Counselor.
- Wait until an entire question has been asked before answering.

Courtroom Protocol

- When taking the oath, hold your right arm up high with fingers straight and look at the officer administering the oath.

- When the officer finishes the oath, “...So help you God.” You say, “I do” or “Yes” in a clear, audible voice, so all in the courtroom can hear. Do not act timid.

- If the opposing Attorney interrupts you before you have a chance to complete your answer, you should indicate this to the Judge.

Demeanor or Acumen

- Never nod your head to indicate “yes” or “no.” The proceedings are likely being recorded and an audible response needs to be picked up by the recorder.

- Don’t volunteer information (which may ultimately have little relevance, or you may wish you hadn’t elaborated on).

- Avoid mannerisms of speech. The habit of prefacing your replies with something like, “I can truthfully say” or “To be perfectly honest,” is redundant since you are under oath and may cast doubt on your entire testimony.

Testifying

- Use “person first” language.
- In civil commitment hearings, testimony should be “relevant” (focused on the criteria for commitment) and “recent” and generally guided by the facts you have ascertained, which pertain to the particular case at hand, in the here and now.
- Be brief. Give relevant, concise responses to questions.
- Be fair.
- Express yourself using simple, appropriate language that the Judge, Attorney(s) and others in the courtroom can understand.

Testifying

- Don’t get caught in snares like this: “Did you ever discuss this with anyone?” (In all probability you did) If asked, name the people - the lawyer, the parties to the application, etc.

- If the lawyer asks you, “Are you as positive about this as the rest of your testimony?” Stop and think. Are you?

- No editorializing.

- If you make a mistake or a slight contradiction, admit it and correct it. Don’t tie yourself in knots trying to cover up some slip of your tongue or memory.

Testifying

- If you can't answer "yes" or "no" then say so. Modify your reply by "Under certain circumstances."
- If you don't know or can't remember, say so. Those are legitimate answers to the most illegitimate of questions.
- Minimize the use of psychological jargon and define all acronyms.
- Never try to be a "smart aleck" witness. If the lawyer is obviously giving you a chance for a wisecrack, it is best avoided.
- Do not lose your temper. Don't let anyone provoke you into arguments over trivial or important points.

Testifying

- On cross examination, don't look at your Attorney as if to obtain clues as to how to answer.
- Try not to be intimidated by actions or statements from the person whose case is being adjudicated.
- When one of the lawyers calls "Objection" or if the court interrupts, stop your answer immediately and wait until the Judge or Commissioner gives direction.
- During "down" time in the courtroom or during recess, you should not engage in conversation with the Judge or Attorney unless specifically invited to do so in order to get procedural questions answered.

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Expert Witness vs. Witness to Facts

- When you are testifying in a civil commitment hearing courtroom as a DE, you are considered an expert witness.
- An eyewitness to an event or have specific knowledge about a situation… witness of fact.
- An expert witness makes judgments or inferences about witness to facts statements.
- If the attorney asks, “Do you want the judge to understand thus & such?” Listen closely to that one. If you don’t want your testimony understood that way, make it clear what you do want them to understand.

Questions?