



# CIVIL COMMITMENT

Understanding Your Rights

APRIL 2016

# WHAT IS CIVIL COMMITMENT?

Civil Commitment is a legal process for a probate court to order a person into treatment for their mental illness. It is sometimes also called “court-ordered treatment,” “involuntary commitment,” or even “being probated.” This treatment can be in a hospital (“***inpatient treatment***”) or in the community (“***outpatient treatment***”).

Freedom and privacy are important to most people and are protected by the U.S. and Ohio Constitutions. When a court orders you to be civilly committed, you lose some freedom and privacy, so it is important for you to know your rights. If you have questions or experience rights violations, please call Disability Rights Ohio.

## NOTE:

***Bold italicized*** words are defined in the glossary on pages 12-13.

Information in gray boxes provides links to Ohio laws.  
[codes.ohio.gov/orc/5122](https://codes.ohio.gov/orc/5122)

## OHIO'S CIVIL COMMITMENT PROCESS

1. Emergency Hospitalization (in some cases)

2. Affidavit of Mental Illness

3. Court Process and Notice

4. Initial Hearing and/or Full Hearing

5. Your Rights at a Hearing

6. Hearing Decision

7. Treatment

8. Discharge and Continuing Orders



## Step 1. Emergency Hospitalization (in some cases)

See Ohio Revised Code 5122.10: [codes.ohio.gov/orc/5122.10](https://codes.ohio.gov/orc/5122.10)

Certain professionals can require you to receive a short emergency hospitalization for a mental illness. This is sometimes also called “**Pink Slipping**.” Note: Not everyone receives emergency hospitalization—some people’s civil commitment process starts at Step 2.

Specifically, a psychiatrist, licensed clinical psychologist, licensed physician, health officer, parole officer, police officer, or sheriff can take you to a hospital even if you do not want to go.

When police or other professionals take you into custody for emergency hospitalization, they must explain who they are, that you are not being arrested for a crime and that you are being taken to a mental health facility to be examined. They should do all of this in a way that does not draw a lot of attention from other people.

Once you get to the hospital, you must be examined within 24 hours to determine if, in the doctor’s opinion, you need to get treatment so you are not a danger to yourself or other people. If they decide you need treatment, they can keep you in the hospital for 3 court days after your initial examination. (Note: weekends and holidays don’t count—they must be 3 days that the courts are open.)

If you agree that you want to receive treatment from the hospital, you can sign yourself in to the hospital as a “**voluntary patient**”. If the hospital wants to keep you against your will for longer than 3 court days, they have to move on to Step 2.



## Step 2. The Affidavit of Mental Illness

See Ohio Revised Code 5122.11 and 5122.111: [codes.ohio.gov/orc/5122.11](https://codes.ohio.gov/orc/5122.11) and [codes.ohio.gov/orc/5122.111](https://codes.ohio.gov/orc/5122.111)

You may or may not have received the emergency hospitalization in Step 1. Another way you can be civilly committed starts with an “Affidavit of Mental Illness.” The **affidavit** is a form that asks a **probate court** to order mental health treatment for a person who meets specific legal rules for civil commitment.

Anyone can file this request to the court, but the **affidavit** must (1) include all the information in R.C. 5122.111, (2) be based on reliable information or personal knowledge and (3) establish **probable cause** that the person needs court-ordered mental health treatment. Note: If a person filed an **affidavit** just to hurt someone else or as a prank, they could be criminally charged with perjury (lying to a court of law). The court may also require a certificate signed by a doctor or a statement that the person has refused to submit to a doctor’s exam.

### What Does the Affidavit Say?

In short, the **affidavit** is a sworn statement that provides some evidence to the court: (1) that you have a **mental illness**, and (2) you need court-ordered treatment because your mental illness is causing certain kinds of harm or risks to yourself or other people. (See Step 6.)

You can look at R.C. 5122.111 to see what information has to be in an **affidavit**.

## Step 3. Court Processing and Notice

**See Ohio Revised Code 5122.11-15:** See links below

- **Review of the Affidavit:** R.C. 5122.11 ([codes.ohio.gov/orc/5122.11](http://codes.ohio.gov/orc/5122.11))  
The probate court judge or magistrate must review the affidavit. The court looks at the facts and information in the affidavit, any documents or evidence that was submitted, and any doctor's opinions. Then, the court decides if the legal requirements were met and if there is "**probable cause**" (if it is probably true) that you need court-ordered treatment.
- **Temporary Order of Detention:** R.C. 5122.11 ([codes.ohio.gov/orc/5122.11](http://codes.ohio.gov/orc/5122.11))  
The judge may decide to issue a "temporary order of detention" that orders police to take you into custody and transport you to a hospital or other facility until your court hearing.
- **Court Appoints You an Attorney:** R.C. 5122.15(A)(c)(4) ([codes.ohio.gov/orc/5122.15](http://codes.ohio.gov/orc/5122.15))  
You have the right to have an attorney represent you. If you can't afford your own attorney, the court has to provide and pay for an attorney for you.
- **Court Sends Notice:** R.C. 5122.12 (<http://codes.ohio.gov/orc/5122.12>)  
The court will schedule a hearing, mail copies of the **affidavit**, notice of the date and time of the court hearing, and the temporary order of detention (if any). These documents will be mailed to:
  - You;
  - Your legal guardian (if you have one), spouse (if you have one), or parents (if you are a minor);
  - The person who filed the affidavit;
  - Your closest adult relative or another person you choose;
  - Your attorney;
  - If you are in a facility, the director or chief clinical officer of the facility;
  - And the county board of mental health.
- **Investigation:** R.C. 5122.13 ([codes.ohio.gov/orc/5122.13](http://codes.ohio.gov/orc/5122.13))  
Within two days of receiving the **affidavit**, the court asks the county mental health board whether you need treatment and where you can get that treatment. The investigation report is not allowed to be used in a hearing as evidence that you need court-ordered treatment, but it can be used to decide where you should get treatment. A copy must be given to your attorney.
- **Medical Examination:** R.C. 5122.14 (<http://codes.ohio.gov/orc/5122.14>)  
The court may also order a medical examination to help it make its decision. A copy of the report must be given to your attorney.

## Step 4. Initial Hearing and/or Full Hearing

**Initial Hearing:** [codes.ohio.gov/orc/5122.141](https://codes.ohio.gov/orc/5122.141)

**Full Hearing:** [codes.ohio.gov/orc/5122.15](https://codes.ohio.gov/orc/5122.15)

At this point, you might be held at a health care facility, or you might still be at home. Within 5 court days of either the affidavit being filed or when you arrived at the health care facility (whichever happens first), the court must hold a hearing. The hearing can be postponed (scheduled on a different day) if there is a good reason. If you haven't had any hearing within 10 calendar days, your case is dismissed and you are free to go. (Note: Court days do not include weekends or holidays; calendar days do.)

If you want, you can have your hearing within the first 5-10 days. Or, if you want more time to prepare, you can waive (refuse) an initial hearing, and then you will be given a full hearing within 30 calendar days of when the affidavit was filed or when you were first held in a facility (whichever occurs first).

If an initial hearing is held, the court may decide to issue a "temporary order of detention" that orders police to transfer you to a hospital or other facility until a full hearing is held. (If you are already in the hospital, the temporary order of detention orders you to stay there until the full hearing.)

Different county **probate courts** handle the initial and/or full hearings differently. Some courts only schedule a full hearing, but the hearing happens in the first 5-10 days. (See Step 5 for your rights at the hearing.)

### What Happens at a Hearing?

The county mental health board will present evidence about why they think you need court-ordered treatment. They must provide "**clear and convincing**" evidence to the court before the judge or magistrate can order treatment.

"**Clear and convincing**" is a legal term that means it must be "highly probable" that the evidence is true, enough to give the court a "firm belief or conviction."

If you don't want to receive court-ordered treatment, you and your attorney can argue against their evidence and try to convince the court that you don't need it. You can also bring evidence and people with you, including doctors, to show that you don't need court-ordered treatment.

## Step 5. Your Rights at a Hearing

See Ohio Revised Code 5122.15: [codes.ohio.gov/orc/5122.15](https://codes.ohio.gov/orc/5122.15)

You have important rights at the hearing:

- **The right** to attend all hearings, or choose not to attend. (No one else can make this decision for you, like an attorney or guardian.)
- **The right** to have an attorney, and for the court to pay for an appointed attorney if you can't afford one.
- **The right** to access all relevant documents, information, and evidence in the case.
- **The right** to an *independent expert evaluation*, if you ask for it. This means you can have another evaluation from a different mental health expert to see if s/he disagrees with experts used by the other side. If you can't afford to pay this other expert, the court has to pay for it.
- **The right** to have the hearing closed to the public, unless you ask for it to be open to the public.
- **The right** to subpoena witnesses and documents (this means, to order a person to speak at court or order a person to provide documents). Your attorney will subpoena witnesses and documents for you.
- **The right** to cross-examine the other side's witnesses (this means, to ask the other side questions and try to find mistakes in their evidence). Your attorney will cross-examine witnesses for you.
- **The right** to testify (speak) at court if you want to, or to remain silent if you want to.
- **The right** to request a transcript of the hearing.
- **The right**, at any time, to apply for *voluntary admission* (see Step 7).



## Step 6. Hearing Decision

See Ohio Revised Code 5122.01(B): [codes.ohio.gov/orc/5122.01](https://codes.ohio.gov/orc/5122.01)

The people who are requesting treatment for you will try to persuade that court (1) that you have a **mental illness**, and (2) your **mental illness** is causing certain kinds of harm or risks to yourself or other people that require court-ordered treatment.

A **mental illness** is defined in the law 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.”

A **mentally ill person subject to court order** is someone who needs court-ordered treatment because their mental illness is causing a risk of harm to themselves or other people.

Here are the most common outcomes of the hearing:

### Court-Ordered Treatment:

A court can order you to inpatient or outpatient treatment for ANY ONE of these four reasons:

#### 1. You are likely to harm yourself.

Legal Language (B)(1): “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.”



## 2. You are likely to harm other people.

Legal Language (B)(2): “Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness.”

## 3. You are unable to take care of your own needs.

Legal Language (B)(3): “Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person’s basic physical needs because of the person’s mental illness and that appropriate provision for those needs cannot be made immediately available in the community.”

## 4. OR you need treatment to protect your rights or someone else’s rights.

Legal Language (B)(4): “Would benefit from treatment for the person’s 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 others or the person.”

A court can order only **outpatient treatment** if a person meets ALL FIVE of these criteria:

### 1. A clinician found that you are unlikely to survive safely without help.

Legal Language (B)(5)(a)(i): “The person is unlikely to survive safely in the community without supervision, based on a clinical determination.”

### 2. You have a history of not complying with treatment.

Legal Language (B)(5)(a)(ii): “The person has a history of lack of compliance with treatment for mental illness...”

### 3. You have been hospitalized or in a jail/prison within the past 3 years, or you have threatened or committed violence within the past 4 years.

**NOTE:** The 3-year and 4-year timelines in this requirement are **extended** by any time you spent in a hospital, jail, or prison.

Legal Language (B)(5)(a)(ii)(I)-(II): “At least twice within the thirty-six months prior to the filing of an affidavit seeking court-ordered treatment of the person under section 5122.111 of the Revised Code, the lack of compliance has been a significant factor in necessitating hospitalization in a hospital or receipt of services in a forensic or other mental health unit of a correctional facility, provided that the thirty-six-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the thirty-six-month period.

[OR] Within the forty-eight months prior to the filing of an affidavit seeking court-ordered treatment of the person under section 5122.111 of the Revised Code, the lack of compliance resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others, provided that the forty-eight-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the forty-eight-month period.”

#### 4. You are unlikely to voluntarily get treatment because of your mental illness.

Legal Language (B)(5)(a)(iii): “The person, as a result of the person’s mental illness, is unlikely to voluntarily participate in necessary treatment.”

#### 5. AND you need treatment to prevent getting worse and harming yourself or others.

Legal Language (B)(5)(a)(iv): “In view of the person’s treatment history and current behavior, the person 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 the person or others.”

### Court-Ordered Outpatient Treatment:

**Outpatient treatment** means you don’t have to stay overnight at a hospital, but you’ll be required to participate in treatment. For example, it could mean you are required to have appointments with a mental health professional, take a medication, or receive other services that a treatment team decides can help your mental illness. See Step 7 below for more information on the different kinds of **outpatient treatment**. It is sometimes also called “assisted outpatient treatment” or “involuntary outpatient commitment.” Note: court-ordered outpatient treatment CANNOT include forced medication; however, the treatment team can tell the court if you are not taking medication that they think you should take (see Step 8).

### No Court-Ordered Treatment:

If the court decides that there was NOT clear and convincing evidence that you need treatment, then your case will be dismissed, and you are free to go.

### Objections and Appeals:

If your hearing was before a referee or magistrate, and you disagree with the decision, you have 14 days to file objections to it. Then, the judge has 10 days to rule on your objections.

If you disagree with a judge’s decision, you have 30 days to file an appeal with a Court of Appeals. You can also have an attorney appointed to you for the appeal. However, you will still have to follow the court’s orders while you are waiting for the results of the appeal. Appeals to an Ohio Court of Appeals can take months or over a year to get a decision—or even longer if you also appeal to the Ohio Supreme Court.

### No Jail:

Civil commitment hearings are not criminal cases, so the **probate court** CANNOT order you to jail or prison to treat your mental illness.

## Step 7. Treatment

See Ohio Revised Code 5122.15(C)-(F) and 5122.01(V): [codes.ohio.gov/orc/5122.15](https://codes.ohio.gov/orc/5122.15) and [codes.ohio.gov/orc/5122.01](https://codes.ohio.gov/orc/5122.01)

The court's initial order can require you to receive treatment for up to 90 days. The court will assign your case to a mental health organization. For example, that could be a hospital, the veteran's administration, the county board of mental health, a private mental health agency, etc. The organization has the responsibility to evaluate how they can help with your mental illness and develop a treatment plan with you. Your treatment plan must consider any directions you have made in an advanced directive, like a Declaration for Mental Health Treatment.

The treatment plan can include things like:

- Working or meeting with one or more mental health experts like doctors, psychiatrists, psychologists, counselors, social workers, therapists, nurses, etc.
- Medications;
- Individual or group therapy;
- Peer support services;
- Financial services;
- Housing or supervised living services;
- Alcohol or substance abuse treatment;
- Any other services that a treatment team thinks can treat your mental illness, help you live and function in the community, or help prevent your mental illness from getting worse.



## Step 8. Discharge and Continuing Orders

See Ohio Revised Code 5122.11-15: See links below

You will continue to receive whatever treatment was ordered to you until one of the following occurs:

- **Someone requests a change:** R.C. 5122.21, R.C. 5122.15(F), (M), (N) ([codes.ohio.gov/orc/5122.21](https://codes.ohio.gov/orc/5122.21) and [codes.ohio.gov/orc/5122.15](https://codes.ohio.gov/orc/5122.15))

If you, the treatment team, or another interested person believes your needs have changed—for better or for worse—they can notify the court and request a change. The court will review the request and decide what to do next, including whether a new hearing should be held.

The treatment team can also notify the court if you are not complying with your treatment plan. Again, the court will review this and decide what to do next.

Note: If you were ordered to receive **outpatient treatment**, the court cannot order you to a hospital unless you meet the legal requirements for court-ordered inpatient treatment (see Step 6). And, the **probate court** cannot order you to a jail or prison for not complying with your treatment.

- **You request to be a “Voluntary” patient:** R.C. 5122.02-03 ([codes.ohio.gov/orc/5122.02](https://codes.ohio.gov/orc/5122.02))

A **voluntary admission** is when you decide that you want to receive mental health treatment. Anyone 18 or older can request voluntary admission.

However, before you actually become a **voluntary patient**, the doctors providing your treatment have to ACCEPT your request. They may or may not allow you to become a **voluntary patient**. Their decision may be based on whether they think you are able to make an informed decision about your treatment.

If you are a **voluntary patient**, you can write a “**Three Day Letter**” requesting to be discharged from the treatment. The doctors providing your treatment then have three court days (not including weekends or holidays) to either accept your request and discharge you, or deny your request and file an **affidavit of mental illness** asking a court to order more treatment (this is like going back to Step 2).

Note: While you are in the hospital, you have several important legal rights. See Ohio Revised Code 5122.29 ([codes.ohio.gov/orc/5122.29](https://codes.ohio.gov/orc/5122.29)) for a list.

- **Another hearing is held to determine a new order:** R.C. 5122.15(H) ([codes.ohio.gov/orc/5122.15](https://codes.ohio.gov/orc/5122.15))

When the court’s order runs out, the treatment team might tell the court you need to continue to receive treatment. The team has to tell the court 10 days before the order runs out if they think you need another order for treatment. If they do, another full hearing is held like in Steps 4 and 5 to determine if the court should make a new order for continued treatment.

The first time you receive court-ordered treatment, the court’s order can last up to 90 days, and then you will have another hearing.

If you receive additional court orders for continued commitment after that, those new orders can last up to two years. If you request it, you can have a new hearing every 180 days (six months); if you don’t request a hearing, it will happen automatically at least every two years.

# GLOSSARY

**Affidavit/Affidavit of Mental Illness** - An affidavit in general is a written, sworn statement made to a court.

An affidavit of mental illness is a sworn statement that provides some evidence to the court: (1) that a person has a mental illness, and (2) their mental illness is causing problems that require court-ordered treatment.

**Civil Commitment** - A legal process through which a probate court orders a person to receive treatment for their mental illness.

**Clear and Convincing Evidence** - “Clear and convincing” is a legal term that means it is “more highly probable” that the evidence is true, enough to give the court a “firm belief or conviction.”

“Clear and convincing” evidence is less evidence than “proof beyond a reasonable doubt” in a criminal case.

**Independent Expert Evaluation** - An evaluation from a different mental health expert to see if s/he disagrees with other experts who are saying a person needs court-ordered treatment. It’s like getting a second opinion from another doctor. If you can’t afford to pay this other expert, the court has to pay for it.

**Inpatient Treatment** - Treatment received while admitted to a hospital. Requires staying overnight (or many nights) at the hospital.

**Mental Illness - Full Legal Definition:** “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.” See Ohio Revised Code 5122.01(A): [codes.ohio.gov/orc/5122.01](http://codes.ohio.gov/orc/5122.01).

**Mentally Ill Person Subject to Court Order - Basic definition:** A person that (1) has a mental illness, and (2) needs court-ordered treatment because their mental illness is causing a risk of harm to themselves or other people.

*Full Legal Definition:* See the full legal definitions in Step 6 on pages 7-8.

**Outpatient Treatment** - Treatment that does not require an overnight stay in a hospital. For example, going to a doctor’s office or going to an appointment with a counselor. Note: Some outpatient treatment can take place at a hospital, but since you are not admitted to/staying at the hospital, it is still considered “outpatient.” See Step 7 for other examples of outpatient treatment.

**Pink Slipping** - An informal term for involuntary Emergency Hospitalization (see Step 1).

**Probable Cause** - *Basic definition:* Enough proof to show that something is probably true.

*Full Legal Definition:* A reasonable amount of suspicion, supported by circumstances sufficiently strong to justify a prudent and cautious person's belief that certain facts are probably true.

**Probate Court** - A type of court that handles a few special types of legal matters, for example civil commitment, guardianships, and wills & estates. A probate court does NOT decide criminal matters.

**Three Day Letter** - If you are a voluntary patient, you can submit a "Three Day Letter" asking your doctor to discharge you. The doctors providing treatment then have three court days (not including weekends or holidays) to either accept the request and discharge you, or deny your request and file an affidavit of mental illness (see Step 2).

**Voluntary Patient/Voluntary Admission** - A voluntary admission is when you decide that you want to receive mental health treatment. Under Ohio Revised Code 5122.02, anyone 18 or older can request voluntary admission. However, the doctors providing your treatment have to accept your request before you actually become a voluntary patient. A guardian can also admit a ward to a hospital as a voluntary patient.



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