

## DELAWARE COMMITMENT PROCEEDINGS

If you have been summoned to court for an involuntary psychiatric commitment, you have certain rights and protections at the hearing and beyond.

### What does involuntary commitment mean?

In a court hearing, a judge will determine whether a psychiatrist has examined you and provided a written certification that you need to be treated at a psychiatric hospital because (1) you are not willing to either make responsible decisions about being hospitalized or you are unwilling to be voluntarily committed to a hospital, *and* (2) you pose a real and present threat of committing harm to yourself, others, or property without immediate hospital care and treatment.

### What are your rights in a commitment proceeding?

- 1) You have the right to be notified of the reason for an involuntary commitment;
- 2) You have a right to have your case heard in front of a judge/commissioner in a courtroom; and,
- 3) You have the right to be represented by a private attorney for free if you cannot afford one. (\*\*The attorney is not from the Public Defender's Office or Community Legal Aid Society, Inc.)

### What happens at the hearing?

- The hearing is confidential, which means it is not open to the public and there is no jury.
- You have a right to be present at the hearing.
- You have the right to request an independent psychiatric evaluation, but you will have to pay for that with your own money.
- You have the right to have your attorney review your psychiatric records, and interview witnesses before the hearing, call witnesses, cross examine witnesses, and present your own evidence.
- The judge will have to determine if there is clear and convincing evidence that you are in need of psychiatric treatment and that you do not have the capacity to make a decision about treatment. (Clear and convincing evidence means that the judge has a substantial amount of evidence to make the determination.)
- The state attorney will have to provide "probable cause" (or evidence) that you require hospitalization.
- If the state is unable to show probable cause that hospitalization is necessary, the judge may order you to be discharged or to be treated on an outpatient basis.

### What happens if the Judge Decides to Involuntarily Commit?

If the judge determines that you need to be involuntarily committed, the order is only effective **for up to 3 months**. This does not necessarily mean you will be in the hospital for 3 full months, only that this is the maximum length of the order (which can be renewed).

The judge will then determine confinement that imposes the least restraint upon your freedom and dignity while providing you with mental health treatment. That might mean hospitalization in the Delaware Psychiatric Center, another Delaware Hospital, or it might mean outpatient commitment to a community mental health program.

### What are my rights if I am involuntarily committed?

Even if you are involuntarily committed you still have the right to the following:

- The right to register and vote in elections.
- The right to buy and sell property and to sign contracts.
- The right to sue and be sued.
- The right to religious freedom.
- The right to have your treatment records kept confidential, unless you sign a release or file a lawsuit, or the court orders release of your records.
- All rights concerning your family, such as the right to marry and have children unless a court order states otherwise.
- The right to give consent or refuse to give consent to treatment with medication. **\*\*If you refuse to consent to medication and you are in a state hospital, you are only forced to take medication if the hospital gets a court order, or in an emergency.**
- The right to be free from abuse, mistreatment and neglect, unjustifiable force, seclusion, physical restraint, drugs or other interventions unless it is necessary to prevent physical harm to self or others *and is* documented.

- The right to wear your own clothes and use your personal belongings.
- The right to have reasonable access to visitors in the facility, to talk by telephone, or write to people outside the facility unless a doctor determines it is necessary to limit your right.
- You have the right to file complaints and grievances with the hospital or with the Disabilities Law Program Patient Advocate who is not a state employee at 255-2775.

\*\* This list is not exhaustive, which means you have additional rights.

### **What rights do I lose if I'm involuntarily committed?**

If you are involuntarily committed you lose the following rights:

- To potentially live where you want to (if you are committed to a hospital).
- To choose how to manage your mental health without assistance from a clinical treatment team.
- To have unrestricted freedom of movement during the time of your hospitalization.
- To possess a firearm if you have been involuntarily committed or involuntarily hospitalized.

## **Community Legal Aid Society, Inc.**

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## **Involuntary Commitment Proceedings**

**Disabilities Law  
Program  
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