



Involuntary Mental Health Commitments

An involuntary mental health commitment is a way a Court can order you to have mental health treatment, even if you do not want it. Most adults can choose whether to get medical treatment, but this process creates an exception. A judge can order treatment if you have a mental health condition, need treatment, and meet the legal standards for commitment. There are two types of adult mental health commitments:

1. **Emergency Process** is used when you are an immediate danger to yourself or others due to a mental health condition. In an emergency, you can be taken into custody immediately and admitted for treatment against your wishes.
2. **Judicial Process** is used when it is not an emergency, but someone (usually a family member) believes you need mental health treatment even if you do not want treatment. In this situation, you usually stay in the community while you wait for a Court to decide.

In both emergency and non-emergency situations, a Court must hold a hearing before finding that you continue to need mental health treatment.

This fact sheet outlines both emergency and judicial mental health commitment procedures for adults. It does not talk about commitment for chemical dependency (alcohol or drug addiction) or commitment procedures for children.

The Difference Between the Two Processes

Area	Emergency Commitment	Judicial Commitment
Who Can Start it	Any person such as an Emergency Medical Services (EMS) worker, family member, or neighbor	Only an "interested person" (parent, guardian, spouse, relative) or the superintendent of a mental health facility.
Reasons for the process	Immediate danger to yourself or others due to a mental health condition.	Concern that you need treatment, but it is not an emergency.

Where it starts	In the Emergency Room of a hospital.	Usually, at a local mental health clinic, then filed with the Probate Court.
Medical Exam	The doctor examines you at the hospital.	The doctor must examine you before the process starts; this can be in the community if you agree.
Custody	You may be taken into protective custody immediately and taken to a mental health hospital by police (Family members may drive you to the mental health hospital).	You usually remain in the community unless the Court orders custody for the exam.
Court Involvement	The Probate Court hears the case quickly after the exam.	The Probate Court reviews the Petition for Judicial Commitment and the doctor's report before deciding.
Release decisions	The Probate Court can order release. If kept for treatment the doctor decides when you no longer need to be in a hospital for mental health care.	The doctor decides on discharge; you can request to be re-examined every six months.

Emergency Commitment Process

Who starts the process?

Anyone can start an emergency commitment by filing an affidavit. An affidavit is a written statement signed under oath. The person must state:

- They believe you have a mental health condition and are likely to cause serious harm to yourself or others if not immediately hospitalized, and
- The specific reasons why they believe this. S.C. Code § 44-17-410.

In most cases, the person filing is a family member or an emergency responder such as Emergency Medical Services (EMS). They must have seen your actions first-hand.

What does “serious harm” mean?

Serious harm means there is a real risk that you could physically harm yourself or someone else. S.C. Code § 44-23-10.

The evaluation process

If you are not already in a hospital or mental health center, you may be taken into custody. This usually means law enforcement will take you to a hospital emergency room where a doctor must examine you.

You are not under arrest, but you cannot leave until the doctor examines you and decides if you meet the standard for commitment. If you do not meet the standard the hospital must release you. S.C. Code § 44-17-430

Doctors' certification

A doctor must examine you. The doctor must put three things in writing:

1. You have a mental health condition.
2. Because of the mental health condition, you are likely to cause harm to yourself or others unless you get treatment in a hospital.
3. The specific reasons why the doctor believes you are likely to cause harm if you do not get treatment.

If law enforcement brought you to the hospital, the doctor must examine you within 24 hours of being taken into custody.

If the doctor finds all three points are true, the doctor must complete and sign a document called a “certification.” The doctor who signs the certification must be different from the person who signed the affidavit.

If both the affidavit and the doctor’s certification are completed, then you can be admitted to the hospital against your will for more evaluation and possible treatment.

In most cases, law enforcement will take you to the psychiatric hospital. You are not under arrest, but you cannot leave the hospital without permission. S.C. Code § 44-17-410.

Frequently Asked Questions

What if law enforcement has a court order to take me into custody and I am taken to a hospital for examination?

If the doctor does not examine you within 24 hours from the time you are taken into custody, you must be released. The rule applies on weekends and holidays. If the doctor decides you do not meet the legal standard, you must be released. S.C. Code § 44-17-430.

If I am admitted involuntarily to a hospital for mental health care, how long must I stay there?

Within 48 hours of your admission, the affidavit and certification must be sent to the Probate Court.

Once the court receives them, it has 48 hours to review them (not counting weekends or holidays) to see if there is probable cause to continue your emergency involuntary hospitalization.

(Probable cause means there is a reasonable likelihood that the information in the affidavit and the certification is correct or that there is a valid reason for an emergency commitment). S.C. Code § 44-17-410.

What happens if the Court finds there is probable cause?

If the Court finds that there is probable cause, the Court will:

- Issue an order for Continued Hospitalization. This requires you to stay in the hospital until you are examined or until a hearing is held.
- Appoint two mental health care professionals called Designated Examiners (DEs) to examine you. One must be a doctor. The other is usually the social worker working with you in the hospital.

If the Court decides there is no probable cause, it will issue an Order for your immediate release and dismiss your case.

What do the results from the exam mean?

- The DEs must decide if you meet the legal standard: that you have a mental health condition and are likely to cause serious harm to yourself or others.
- If both DEs find that you do not meet the standard, then you are released, and the case is dismissed.
- If one DE finds you meet the standard and the other does not, the Court might dismiss the case, or the Court might ask a third examiner to examine you.
- If two DEs find that you meet the standard, then the Probate Court must hold a commitment hearing within 15 days of your hospital admission.

Can I ask for an independent Designated Examiner?

Yes. If you cannot afford one, then the state will pay for the examination. S.C. Code § 44-17-530.

If there is a hearing, will I have a lawyer?

Yes. The Court will appoint an attorney to represent you, unless you have one. The

attorney often also serves as your Guardian ad Litem (GAL).

- As your attorney, they must advocate for what you want.
- As your GAL, they must advocate for what is in your best interest.

Because these two roles can sometimes conflict, you may want to:

- Hire your own attorney.
- Ask the Court to appoint an attorney who is not your GAL.

If the Court says no, you can contact Disability Rights South Carolina. Keep in mind that trying to get a new attorney could delay your hearing and may mean a longer stay in the hospital. If you hire your own attorney, make sure they contact the Probate Court before the hearing so they can be included in the notice of the hearing.

Frequently Asked Questions about Full Probate Court Hearing

What are my rights?

- Before the hearing, your attorney should meet with you. Your attorney should explain your rights, review the DE reports with you, prepare to present any witnesses you have, and answer your questions.
- A full hearing must be held within 15 calendar days of your involuntary admission to the hospital. S.C. Code § 44-17-410.
- The Court must tell you the date, time, and place of your hearing at least 5 business days before the hearing. S.C. Code § 44-17-420.
- You have a right to have an attorney with you. S.C. Code § 44-22-30 and S.C. Code § 44-17-530.
- You have the right to be present at the hearing. S.C. Code § 44-17-570.
- You and your attorney have a right to bring witnesses and ask them questions. S.C. Code § 44-17-570.
- You and your attorney can ask any other witnesses questions. S.C. Code § 44-17-570.
- If you can, try to take notes during the hearing. If you want to appeal, the notes will help the attorney.

How does the Court decide if I need treatment?

- The Court can require treatment if you meet the following standard:
 - The Court must find you have a mental health condition and you need

treatment.

- The Court must also find that, because of the mental health condition, you either do not have the ability to make good choices about your treatment or are likely to cause serious harm to yourself or others.
- The Court must have clear and convincing evidence (strong facts) to order treatment. S.C. Code § 44-17-580.

Can I appeal the decision the Court makes?

Yes. You have a right to appeal after the hearing. S.C. Code § 44-17-620.

- You may appeal any treatment or commitment order following the hearing. You appeal to the Circuit Court.
- You must tell both the Probate Court and the Circuit Court that you want to appeal and the reasons for the appeal within 15 calendar days of the date of the order. You must act quickly.
- You must pay for filing the appeal, unless the Court finds that you cannot afford to.
- If you have questions about an appeal, you may contact Disability Rights South Carolina (DRSC). If you want to ask DRSC to represent you in an appeal, you must contact them as soon as possible.

What happens after the hearing?

- If the Probate Court finds you do not meet the standard, the court will dismiss your case. If you are in a hospital, you will be able to leave.
- If the Probate Court finds you meet the standard, the Court can order:
 - Inpatient treatment at a public or private mental health hospital.
 - Outpatient treatment at a public or private mental health facility.
 - Outpatient treatment following inpatient treatment.

What should I do if I am being committed?

- Listen to your attorney and the health professionals around you. If you do not agree with them, explain why.
- Follow the Court's order. If you do not agree with the Court order, your only option is to file an appeal or other motion with the Court. If you are released from the hospital but have been ordered to receive outpatient treatment and do not attend that treatment, the facility must report you to the Court. The Court will have another hearing, and you can be re-committed or even sent to jail for not following the Court order.

- Learn about self-advocacy. Disability Rights South Carolina has online resources and can train people on how to advocate for their rights.

How and when you can be released?

The facility can discharge you when your condition has improved to the point that you no longer meet the legal standard. S.C. Code § 44-22-70.

- If you disagree with the facility you or any interested person can ask the Court for a re-examination. S.C. Code § 44-17-630.
 - An interested person is your parent, guardian, spouse, adult next of kin, or nearest friend. S.C. Code § 44-23-10(10).
 - You can ask for a re-examination every six months.
- The treatment facility must inform you and at least one other interested person of this right every six months. S.C. Code § 44-17-630.

What is the difference between the emergency commitment process and judicial commitment process?

How the process starts

In an emergency commitment process, anyone can start the process. For example, an EMS worker who is called to the scene. A judicial commitment is different because only an “interested person” or a superintendent of a mental institution can start the process. S.C. Code § 44-17-510. An “interested person” can be a parent, guardian, spouse, adult next of kin, or close friend who helps you do things you could not do on your own, such as drive you to doctors’ appointments. S.C. Code § 44-23-10(9).

In a judicial commitment, an interested person can ask the Probate Court to order you to have mental health treatment because they think you do not have the ability to make responsible decisions about your treatment. The document that is completed is called a “Petition for Judicial Commitment.” In most counties, this petition is prepared with an intake staff person at the local mental health clinic. This process does not start at the Probate Court since it would create a conflict of interest if the Court later hears your case.

Medical exam requirement

In an emergency commitment you are taken into protective custody to have an exam. Before a judicial commitment can begin, a doctor must examine you and tell the Court if they think you have a mental illness and should be committed. If you do not want to have the exam, the interested person can give the Probate Court a statement saying you do not want the exam. Then, the Probate Court can order a law enforcement officer to take you into custody to have an exam. The difference is that in a judicial commitment you can agree to have the exam in the community, instead of in a hospital.

Release and re-examination rights

If you are judicially committed, a doctor decides when you can be released. You can ask the Court for a new exam once every six months.

Where can I get help?

The Office of Mental Health [Office of Patient Advocacy](#) has advocates who can give you information and may be able to help you if you are in a OMH facility. You can contact the Office of Patient Advocacy at 1-866-300-9330.

If you believe that you have been abused or neglected in an OMH facility, contact the State Law Enforcement Division (SLED). Their telephone number is 1-866-200-6066. You may also contact the Office of Patient Advocacy or Disability Rights South Carolina. If you believe that you have been abused or neglected in a privately-operated facility, contact local law enforcement. You may also contact Disability Rights South Carolina.

The S.C. Code sections mentioned in this brochure can be found online at <http://www.scstatehouse.gov/code/title44.php>. If you do not have access to the internet, you can ask your social worker to print a copy of the relevant sections of the S.C. Code. If your social worker cannot help you or if you have trouble finding what you need, contact Disability Rights South Carolina for help.

Words to Know

Affidavit: a statement written under oath to be true, used by the court

Circuit Court: South Carolina is divided into sixteen judicial circuits. In South Carolina, Circuit courts are the state's court of general jurisdiction, which means it can hear both civil and criminal matters. The civil court is called the Court of Common Pleas, and the criminal court is called the Court of General Sessions.

Designated Examiner: a doctor or a person registered by the Office of Mental Health as qualified in the diagnosis of mental health conditions.

Guardian ad Litem (GAL): a court-appointed advocate for children or vulnerable adults, investigating family situations in abuse/neglect, divorce, or custody cases to represent the person's best interests and report to the judge.

Office of Mental Health: a South Carolina state agency under the Department of Behavioral Health and Developmental Disabilities.

Probate Court: Each county in South Carolina has a probate court. They handle marriage licenses, process wills, requests guardianship, and involuntary mental health commitments. It can also hear matters about trusts and powers of attorney.

Probable Cause: having enough solid facts and evidence that a reasonable person would believe the evidence

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Disability Rights South Carolina

The Protection and Advocacy System for South Carolina

www.disabilityrightssc.org | info@disabilityrightssc.org | 1-866-275-7273